

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

CELANESE INTERNATIONAL
CORPORATION,

Plaintiff,

v.

ONEBEACON AMERICA INSURANCE
COMPANY, formerly known as
COMMERCIAL UNION INSURANCE
COMPANY; POTOMAC INSURANCE
COMPANY; and RESOLUTE
MANAGEMENT-NEW ENGLAND, INC.,

Defendants.

CIVIL ACTION NO. 06-1625-BLS2

SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Celanese International Corporation (“Celanese”), for its second amended complaint against defendants Commercial Union Insurance Company, now known as OneBeacon America Insurance Company (“Commercial Union”), Potomac Insurance Company (“Potomac”), and Cavell America, Inc. and Cavell USA Inc., now known as Resolute Management-New England, Inc. (“Resolute”) (collectively, “defendants”), upon knowledge as to its own acts and upon information and belief as to the acts and omissions of others, alleges as follows:

INTRODUCTION

1. This is an action by Celanese variously against defendants for money damages and declaratory relief for breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference with contract, conspiracy, concert of action and unfair and

deceptive trade practices in violation of Massachusetts Gen. Laws Chapter 93A. Celanese also seeks a declaratory judgment pursuant to Massachusetts General Laws Chapter 231A with respect to Celanese's rights under primary general liability insurance policies issued by Commercial Union to Celanese with respect to bodily injury lawsuits brought against Celanese alleging covered damages due to exposure to asbestos and other materials, substances and products. As a result of defendants' unlawful conduct, Celanese has been and continues to be damaged, and Celanese seeks compensatory and other damages, and attorneys' fees, costs and expenses, resulting therefrom.

THE PARTIES, JURISDICTION AND VENUE

2. Celanese is a Delaware corporation with its principal place of business in Dallas, Texas. Celanese is formerly known as Celanese Americas Corporation, HNA Holdings, Inc., Hoechst Corporation, Hoechst Celanese Corporation, Celanese Corporation, Celanese Corporation of America, Inc., and American Cellulose and Chemical Manufacturing Company. Celanese is engaged primarily in the business of developing and producing materials used in consumer products. Celanese brings this action on behalf of itself for its own benefit, and also on behalf of its predecessors.

3. Defendant Commercial Union Insurance Company, now known as OneBeacon America Insurance Company, is an insurance company organized under the laws of the Commonwealth of Massachusetts, with its principal place of business in Boston, Massachusetts. At all times pertinent, Commercial Union was licensed to do business, and was and is doing and transacting business, in the Commonwealth of Massachusetts.

4. Commercial Union is an indirect wholly-owned subsidiary of White Mountains Insurance Group, Ltd., a New York Stock Exchange-listed Bermuda-domiciled insurance

holding company. In or about June 2001, in connection with the purchase by White Mountains of Commercial Union, White Mountains was substantially re-capitalized by and through Berkshire Hathaway, Inc., among others, another New York Stock Exchange-listed holding company whose principal assets consist substantially of insurance and reinsurance companies. Berkshire Hathaway owned or owns all or essentially all of the preferred stock of White Mountains. Berkshire Hathaway also owned or owns substantially all of its outstanding warrants which were recently converted into common stock of White Mountains. Berkshire Hathaway was or is, accordingly, the single largest holder of stock, on a fully-diluted basis, of White Mountains, the parent of Commercial Union. Berkshire Hathaway also claims to be financially responsible for all of the damages sought by Celanese in this action from Commercial Union inasmuch as Berkshire Hathaway subsidiary National Indemnity Company (“NICO”) and sister Berkshire Hathaway subsidiary General Reinsurance Corporation (“GenRe”) have both issued finite reinsurance policies to an affiliate of Commercial Union covering its “long tail” environmental, asbestos and product liability losses, which are at issue in the case. These finite reinsurance contracts are disguised loans, were proper accounting methods employed pursuant to generally accepted accounting principles, or GAAP. GenRe and certain of its former officers have been the subject of grand jury investigations due to its improper use of finite reinsurance contracts essentially identical to those employed by Commercial Union, White Mountains and their affiliates to disguise the true financial status of these companies. It is unclear whether Commercial Union or its affiliates, including defendant Potomac Insurance Company, could pass a solvency or “going concern” test were proper treatment given to its finite risk reinsurance contracts or the true scope of its “long tail” losses, appropriately quantified.

5. Defendant Potomac Insurance Company is a Pennsylvania corporation with its principal operating office located at One Beacon Street, Boston, Massachusetts. Potomac is a wholly-owned subsidiary of OneBeacon Insurance Group, LLC. Potomac was incorporated in 1995. It ceased to do insurance business, however, in 1999. Potomac was reactivated in or about June 2001 to serve as a conduit for transferring loss reserves from Commercial Union to Berkshire Hathaway's subsidiaries NICO and GenRe. Potomac is basically a thinly-capitalized shell, with paid-in capital of only \$2,350,000, total cash and investments of only \$9,589,000 and policyholder surplus of only \$9,505,000 or less than what Commercial Union owes to Celanese alone. Yet, Potomac is carrying on its books billions of dollars in asbestos and environmental loss reserves "transferred" to Potomac in connection with the Berkshire Hathaway-backed acquisition of Commercial Union by White Mountains.

6. Furthermore, as a result of the issuance of these finite reinsurance contracts, Berkshire Hathaway took essentially all of Commercial Union's reserves, cash and liquid assets, which it has been using since 2001 to invest in other businesses and to earn equity returns for Berkshire Hathaway's shareholders, several of which are among the Forbes 400 richest Americans. Berkshire Hathaway's largest shareholder is the second richest American and one of the ten richest human beings in the world. Berkshire Hathaway has a market capitalization of approximately \$150 billion. As set forth herein, Berkshire Hathaway and its portfolio companies amass staggering wealth through capital appreciation for themselves by plundering struggling insurance companies such as Commercial Union and then failing or refusing to pay claims when due. Furthermore, Berkshire Hathaway's largest shareholder, Warren Buffet, and his hand-picked insurance "guru" Ajit Jain, are intimately familiar with the details of these transactions and deliberately intend to benefit Berkshire Hathaway and, hence, themselves, at the expense of

policyholders by capturing the “float” and outsized equity returns resulting from delaying payment, denying claims and doing long-term “time-and-distance” deals such as those described herein.

7. During the period of Commercial Union’s breach of its settlement obligations to Celanese, the equity value of White Mountains has increased by over 300%, amounting to billions of dollars in gains for its equity holders, including Berkshire Hathaway. One share of White Mountains stock currently trades at approximately \$600 per share. One share of Berkshire Hathaway’s Class A common stock currently trades at over \$100,000 per share.

8. Cavell America, Inc. and Cavell USA Inc. are now known as Resolute Management-New England, Inc. (collectively, “Resolute”). They are corporations organized under the laws of the State of Delaware, with their principal place of business in Cambridge, Massachusetts. Resolute was formerly known as Ken Randall America, Inc. Resolute states that it is a “third party administrator” that handles, administers, makes coverage decisions and “processes” insurance claims for insurance companies including, without limitation, Commercial Union. Resolute is a wholly-owned subsidiary of Berkshire Hathaway, Inc. Thus, one wholly-owned subsidiary of Berkshire Hathaway (Resolute) has breached a written settlement agreement, for the sole purpose of slowing down payment of millions of dollars, so that two other Berkshire subsidiaries (NICO and GenRe) would not have to pay out some of their reinsurance funds, so that Berkshire Hathaway would have more surplus cash to invest (it currently sits on a cash hoard of over \$20 billion) in companies such as White Mountains, so that the equity value of White Mountains and Berkshire Hathaway would increase by up to 17 times the amount of money so taken from Celanese (the current price-earnings ratio of White Mountains is 17, which means that every additional dollar that Commercial Union earns by not

paying Celanese is worth \$17 in enterprise value to its parent; similarly, the current price earnings ratio of Berkshire Hathaway is 13, so that every additional dollar that Resolute fails to pay to Celanese is worth \$13 in enterprise value to Berkshire Hathaway.) Except as expressly stated otherwise herein, in performing the acts complained of herein, Resolute was, and is, the duly authorized agent of Commercial Union, acting within the course and scope of such agency with the full knowledge and informed consent of Commercial Union. Resolute was also acting at all times under the direction and control of Berkshire Hathaway and of Berkshire Hathaway's other subsidiary (NICO) that controls the funding of Commercial Union's historic or "long tail" liabilities.

9. Resolute assumed its so-called "third party administrator "role" subsequent to June 2001 when this elaborate financial scheme was concocted. In essence, White Mountains shuffled Commercial Union's asbestos and environmental reserves to non-operating shell Potomac, an affiliated entity not under the control of either OneBeacon America Insurance Company or its parent OneBeacon Insurance Company. Berkshire Hathaway subsidiary NICO "appointed" Resolute as an allegedly independent "third party administrator" in order to slow down the "burn" under NICO's finite reinsurance contract issued to Potomac and then recorded as a "contraliability" to OneBeacon America through another finite reinsurance vehicle. This shuffling, stalling and obfuscation has had its intended result. For example, Commercial Union's paid environmental losses have declined by roughly 75%, from \$114,000,000 in 2000 – before this scheme was hatched – to \$30,000,000 in 2005. It is apparent that this decline came at the expense of Celanese (and perhaps others), with payments dropping dramatically after 2001.

10. Jurisdiction is proper pursuant to M.G.L. c. 223A §§ 2 and 3 inasmuch as (i) the domicile and principal place of business of the defendants is in Massachusetts; (ii) the defendants

are licensed to do, and have in fact conducted and currently conduct, business in Massachusetts; (iii) the wrongful conduct alleged in this complaint took place, in whole or in significant part, in Massachusetts; (iv) performance under defendants' liability insurance policies is sought in this jurisdiction; and (v) defendants have engaged in illegal and tortious conduct relative to Celanese in Massachusetts.

11. Venue is proper in the Business Litigation Session of the Superior Court because this case involves a complex business dispute, involving over \$5,000,000, and Commercial Union's, Potomac's and Resolute's principal places of business are located a short distance from this Court in counties under the reach of the Business Litigation Session.

**ACCOUNT STATED: OVERDUE PAYMENTS PURSUANT
TO DEFENSE COST REIMBURSEMENT AGREEMENT
ENTERED INTO BY DEFENDANT COMMERCIAL UNION**

12. On or about February 24, 1998, Commercial Union entered into a settlement agreement with Celanese, known as the "Defense Cost Sharing Agreement Between Commercial Union and Hoechst Celanese Corporation" (the "Commercial Union Defense Agreement"). The Commercial Union Defense Agreement requires Commercial Union to pay a portion of the costs of defense of bodily injury lawsuits asserted against Celanese, referred to as the "Asbestos Bodily Injury Claims" and the "Chemical Exposure/Product Liability Bodily Injury Claims." Commercial Union is required to make such payments within thirty (30) days after invoices are rendered by Celanese. Invoices are rendered quarterly. For quarterly invoices rendered prior to June 2002, Commercial Union paid 100% of the amounts billed. For invoices rendered after June 2002, Commercial Union paid only a portion of Celanese's invoices. For all invoices dated after April 7, 2004, Commercial Union paid nothing (some partial payments have been received by Celanese only after it was forced to bring this litigation). The invoices rendered to

Commercial Union that were unpaid and overdue at the time of commencing this action, pursuant to the Commercial Union Defense Agreement, are as follows for “Asbestos Bodily Injury Claims”:

<u>Quarter</u>	<u>Date Sent to Commercial Union</u>	<u>Amount of Invoice Unpaid and Overdue</u>	<u>Claim Type</u>
3Q 2002	10/17/02	\$529,184.15	Products/Premises
4Q 2002	01/24/03	7,390.30	Products
1Q 2003	05/05/03	4,170.32	Products
2Q 2003	07/28/03	5,662.57	Products
3Q 2003	10/24/03	11,769.17	Products
4Q 2003	01/06/04	23,500.69	Products
2Q 2004	08/17/04	413,476.38	Premises
2Q 2004	08/17/04	20,600.74	Products
3Q 2004	10/25/04	572,739.76	Premises
3Q 2004	10/25/04	14,900.64	Products
4Q 2004	01/19/05	373,799.33	Premises
4Q 2004	01/19/05	25,789.85	Products
1Q 2005	05/04/05	354,387.66	Premises
1Q 2005	05/04/05	11,440.51	Products
2Q 2005	08/15/05	484,921.51	Premises
2Q 2005	08/15/05	211,184.25	Products
3Q 2005	11/08/05	124,474.72	Premises
3Q 2005	11/08/05	88,473.22	Products
4Q2005	02/03/06	242,832.96	Premises
4Q2005	02/03/06	127,725.35	Products
1Q2006	04/13/06	103,575.31	Premises
1Q2006	04/13/06	<u>58,595.90</u>	Products

Total: \$3,810,535.29

The unpaid invoices rendered to Commercial Union that were unpaid and overdue pursuant to the Commercial Union Defense Agreement were as follows for “Chemical Exposure/Product

Liability Bodily Injury Claims”:

<u>Quarter</u>	<u>Date Sent to Commercial Union</u>	<u>Amount of Invoice Unpaid and Overdue</u>	<u>Claim Type</u>
2Q 2004	08/17/04	59,519.70	Premises
2Q 2004	08/17/04	15,908.87	Products
3Q 2004	10/25/04	53,110.38	Premises
3Q 2004	10/25/04	36,299.47	Products
4Q 2004	01/19/05	66,617.12	Premises
4Q 2004	01/19/05	5,995.66	Products
1Q 2005	05/04/05	37,697.17	Premises
1Q 2005	05/04/05	26,828.85	Products
2Q 2005	08/15/05	65,902.20	Premises
2Q 2005	08/15/05	3,576.13	Products
3Q 2005	11/08/05	9,843.24	Premises
3Q 2005	11/08/05	5,221.49	Products
4Q 2005	02/03/06	15,240.41	Premises
4Q 2005	02/03/06	5,402.47	Products
1Q2006	04/13/06	83,491.84	Premises
1Q2006	04/13/06	<u>2,977.45</u>	Products

Total: \$691,696.06

The total of these overdue accounts owed by Commercial Union to Celanese was \$4,502,231.35, as of the date of commencing this action. In response to this complaint, Commercial Union paid a portion of these overdue accounts. At no time did Commercial Union timely object to any of these invoices, as required by the Commercial Union Defense Agreement.

13. The Commercial Union Defense Agreement requires invoices to be paid within thirty (30) days after the date of the invoice, unless disputed, and further requires all undisputed charges to be paid immediately. Commercial Union did not timely, and has not since provided any rational reason for disputing any of these invoices and, accordingly, its time to do so has

passed. All of the referenced invoices are payable in full and are overdue. The Commercial Union Defense Agreement requires immediate payment of these overdue accounts.

14. The Commercial Union Defense Agreement is attached as Exhibit 1. A schedule of the invoices currently due and payable to Celanese pursuant to the Commercial Union Defense Agreement, as of the date of this amended complaint, is attached as Exhibit 2.

**ACCOUNT STATED: OVERDUE PAYMENTS
PURSUANT TO DEFENSE AGREEMENT
BETWEEN CELANESE AND COMMERCIAL UNION**

15. On or about May 8, 2001, Commercial Union and others entered into a “Defense Agreement Between Celanese and Celanese Insurers Regarding Photo Resist Claims” (hereafter, the “Photo Resist Agreement”). The Photo Resist Agreement requires Commercial Union to pay a percentage of defense costs associated with product liability lawsuits referred to as the “Photo Resist Claims.” Pursuant to the Photo Resist Agreement, Commercial Union has been billed each quarter since the effective date of the Photo Resist Agreement. Certain invoices have been paid in full. On all other invoices, however, Commercial Union has paid nothing. As of the fourth quarter of 2005, the total amount invoiced to Commercial Union and not paid was \$2,878,253.41. In response to the commencement of this action, Commercial Union paid a small percentage of these overdue amounts.

16. A copy of the Photo Resist Agreement is attached as Exhibit 3. A list of Photo Resist invoices overdue and unpaid by Commercial Union, as of the date of this amended complaint, is attached as Exhibit 4.

17. Resolute is the claims handler and agent for Commercial Union pursuant to the Commercial Union Defense Agreement and the Photo Resist Agreement. Resolute has improperly handled the invoices and has wrongfully failed or refused to make payments for or on

behalf of Commercial Union to Celanese, as required, pursuant to the referenced settlement agreements.

THE INSURING OBLIGATIONS OF COMMERCIAL UNION

18. The Commercial Union Defense Agreement and the Photo Resist Agreement represent a partial resolution of disputes pursuant to various comprehensive general liability policies issued to or benefiting Celanese, as described further below. These policies provide both for the full payment or reimbursement of defense costs, and for the full payment or reimbursement of settlement and judgment costs, known as “indemnity costs,” up to applicable policy limits (if any). Furthermore, these policies provide for the payment of “all sums” imposed on the insured as a result of suits asserted against Celanese such as the Asbestos Bodily Injury Claims, the Chemical Exposure/Product Liability Bodily Injury Claims and the Photo Resist Claims. Accordingly, in the absence of the Commercial Union Defense Agreement and the Photo Resist Agreement, Commercial Union is obligated to pay or reimburse in full all defense and indemnity costs not otherwise reimbursed by another Celanese insurer pursuant to the Liability Insurance Policies.

GENERAL FACTUAL ALLEGATIONS

19. Celanese is a defendant in hundreds of bodily injury lawsuits pending in various jurisdictions (the “Liability Suits”). In the Liability Suits, the plaintiffs seek recovery from Celanese for alleged damages because of bodily injury resulting from the alleged injurious exposure to products allegedly manufactured, sold, supplied or distributed by Celanese (“product liability claims”), or from alleged exposure to conditions at premises locations owned, leased or occupied by Celanese (“premises liability claims”). The Liability Suits are comprised of claims relating to the alleged injurious exposure to asbestos (“Asbestos Bodily Injury Claims”),

chemicals (“Chemical Exposure/Product Liability Bodily Injury Claims”), and substances used in the production of computer chips (“Photo Resist Claims”). The plaintiffs in the Liability Suits seek money damages from Celanese on various theories of recovery, including strict liability, negligence, and failure to warn.

20. Commercial Union is an insurance company that issued primary, umbrella and excess comprehensive general liability insurance policies to Celanese between at least 1965 and 1972 (the “Liability Insurance Policies”). The Liability Insurance Policies issued to Celanese by Commercial Union provide coverage, including (without limitation) the duty to defend and indemnify Celanese (as those terms are commonly understood in the insurance business) from and against the Liability Suits.

21. Commercial Union issued at least the following known Liability Insurance Policies to Celanese responsive to premises liability claims:

<u>Policy Number</u>	<u>Policy Period</u>
131LC2	06/01/65 – 07/01/68
131LC3	06/01/65 – 07/01/68
131CLC4	06/01/65 – 07/01/68
131LC10	07/01/68 – 07/01/71
131LC11	07/01/68 – 07/01/71
CY-9500-002	07/01/69 – 07/01/71
EY-9500-002	07/01/69 – 07/01/71
EY-9500-034	07/01/71 – 07/01/72

None of these policies issued by Commercial Union has any aggregate limit of liability for premises liability claims.

22. Commercial Union issued at least the following known Liability Insurance Policies to Celanese responsive to product liability claims:

<u>Policy Number</u>	<u>Policy Period</u>
131LC2	06/01/65-06/01/66
131LC2	06/01/66-06/01/67
131LC2	06/01/67-06/01/68
131LC3	06/01/65-06/01/66
131LC3	06/01/66-06/01/67
131LC3	06/01/67-06/01/68
131CLC4	06/01/65-06/01/66
131CLC4	06/01/66-06/01/67
131CLC4	06/01/67-06/01/68
131LC10	07/01/68-07/01/69
131LC10	07/01/69-07/01/70
131LC10	07/01/70-07/01/71
131LC11	07/01/68-07/01/69
131LC11	07/01/69-07/01/70
131LC11	07/01/70-07/01/71
CY-9500-002	07/01/69-07/01/70
CY-9500-002	07/01/70-07/01/71
EY-9500-002	07/01/69-07/01/70
EY-9500-002	07/01/71-07/01/72
EY-9500-034	07/01/71-07/01/72

True and correct copies of the subject policies are attached hereto as Exhibits 5 through 11, inclusive.

23. The Liability Insurance Policies share certain characteristics that make them particularly valuable to Celanese. These characteristics include, without limitation, the following:

- They pay “all sums” that Celanese is legally obligated to pay as damages because of bodily injury that took place, in any respect or to any degree, during their respective policy periods;
- They contain no exclusion for the bodily injury claims at issue;

- They contain no self-insured retention or deductible for which Celanese allegedly would be responsible; and
- They contain an unlimited, supplemental duty to defend, requiring a defense of Celanese of any suit, even if the allegations are groundless, false or fraudulent.

24. Commercial Union is obligated to pay in full Celanese's costs of defense and Celanese's legal liabilities, including "all sums" spent in settlement, in connection with the Liability Suits.

25. Celanese timely notified Commercial Union and its claims handler Resolute of the Liability Suits, and has tendered the defense and indemnity obligations of the Liability Suits pursuant to the terms of the Liability Insurance Policies and applicable law.

26. On or about February 24, 1998, Celanese entered into a defense cost sharing agreement with Commercial Union regarding the defense of the Asbestos Bodily Injury Claims and Chemical Exposure/Product Liability Bodily Injury Claims (the "Commercial Union Defense Agreement"). A true and correct copy of that Agreement is attached hereto as Exhibit 1. Certain concessions were made by Celanese in the Commercial Union Defense Agreement, relating to Commercial Union's obligations under the Liability Insurance Policies, which were entirely dependent on the good faith performance by Commercial Union of its obligations under the Agreement. Commercial Union has failed and refused, and continues to fail and refuse, fully to perform under the Agreement, and has materially breached its contractual obligations therein. As a direct and proximate result, Celanese paid over \$4,501,231.35 in defense costs for the Asbestos Bodily Injury Suits and Chemical Exposure/Product Liability Bodily Injury Claims which under the Commercial Union Defense Agreement are rightfully Commercial Union's responsibility.

27. On or about May 8, 2001, Celanese entered into a defense cost sharing agreement with Commercial Union, and others, regarding the defense of the Photo Resist Claims (“Photo Resist Agreement”). A true and correct copy of the Photo Resist Agreement is attached hereto as Exhibit 3. Certain concessions were made by Celanese in the Photo Resist Agreement relating to Commercial Union’s obligations under the Liability Insurance Policies, which were entirely dependent on the good faith performance by Commercial Union of its obligations under the Photo Resist Agreement. Commercial Union has failed and refused, and continues to fail and refuse to perform under the Photo Resist Agreement, and has materially breached its contractual obligations therein. As a direct and proximate result, Celanese paid over \$5,107,236.94 in defense costs for the Photo Resist Claims that are rightfully Commercial Union’s responsibility under the Photo Resist Agreement.

28. As a direct result of Commercial Union’s material breaches of the Commercial Union Defense Agreement and Photo Resist Agreement, Commercial Union is bound by the terms of the Liability Insurance Policies and is, accordingly, pursuant to the terms thereof, obligated to pay 100% of Celanese’s unreimbursed costs of defense and 100% of Celanese’s costs of meeting judgments and settlements associated with the Asbestos Bodily Injury Suits, the Chemical Exposure/Product Liability Bodily Injury Claims and the Photo Resist Claims. During the time period since Commercial Union has materially breached the Agreements, Celanese has paid and incurred over \$25,000,000 in unreimbursed defense costs on the Liability Suits.

29. Subsequent to the parties entering into the Commercial Union Defense Agreement and the Photo Resist Agreement, as alleged herein, Resolute assumed responsibility as the “third party administrator” for claims for bodily injury asserted against Commercial Union policyholders. This was done without the consent of Celanese. Resolute now performs the roles

that more suitably, and traditionally, had been performed by Commercial Union, including (i) approving payment of defense costs incurred by Commercial Union policyholders, including Celanese; (ii) approving settlement of claims asserted against Commercial Union policyholders, including Celanese; and (iii) paying defense costs and settlement expenses on behalf of Commercial Union policyholders, including Celanese.

30. On information and belief, Resolute also took control over the following business operations of Commercial Union:

- Resolute is responsible for commencing, conducting, pursuing, prosecuting, settling, appealing or compromising claims and litigation filed by Commercial Union policyholders, such as Celanese, against Commercial Union.
- Resolute is responsible for developing, and implementing, all of Commercial Union strategic decisions in addressing issues raised by its policyholders, such as Celanese.
- Resolute is responsible for hiring the attorneys to represent Commercial Union in coverage litigation with its policyholders, such as Celanese.
- Resolute is responsible for deciding whether, and for what amount, Commercial Union will resolve claims asserted against it by policyholders, such as Celanese.
- Resolute is responsible for deciding whether, and to what extent, Commercial Union will assert contribution or subrogation rights against other insurance companies.

31. After Resolute assumed management and control of Commercial Union's obligations to its policyholders, including Celanese, Commercial Union stopped making timely or complete payments to Celanese under the Commercial Union Defense Agreement and the Photo Resist Agreement. Resolute has tortiously interfered with these agreements and Celanese's rights under the Liability Insurance Policies or has, as the agent for Commercial Union, caused or induced the breach of these agreements by Commercial Union, for the sole

benefit of Resolute, Commercial Union and their respective affiliates, including (without limitation) Berkshire Hathaway, NICO, Potomac and White Mountains.

32. To date, Commercial Union has failed and refused to reimburse Celanese all of its costs of defense of the Liability Suits under the Commercial Union Defense Agreement and under the Photo Resist Agreement. Celanese believes and therefore avers that Commercial Union will continue to default, in whole or in part, on future obligations owed pursuant to the Commercial Union Defense Agreement and the Photo Resist Agreement. This complaint seeks a declaratory judgment requiring full and timely future performance pursuant to the Liability Insurance Policies, including full payment of defense costs not otherwise reimbursed by a Celanese insurance company, as well as of “all sums” imposed on Celanese as a result of the Asbestos Bodily Injury Claims, the Chemical Exposure/Product Liability Claims and the Photo Resist Claims.

33. In or about September 2006, Celanese paid \$995,000 as damages to settle numerous outstanding Photo Resist Claims (the “PhotoResist Indemnity Payment”). This settlement payment is covered in full by the Commercial Union policies. Despite timely tender and demand therefor, Commercial Union has failed and refused to pay or reimburse Celanese for this settlement pursuant to the Liability Insurance Policies or to make any payment whatsoever in respect of such settlement obligations.

CAUSES OF ACTION

COUNT I

(Breach of Contract Against Commercial Union Pursuant to The Commercial Union Defense Agreement)

34. Celanese repeats and realleges the allegations set forth in paragraphs 1 through 33 and further alleges as follows:

35. Commercial Union is obligated to reimburse Celanese within thirty (30) days for quarterly invoices rendered pursuant to the Commercial Union Defense Agreement. Invoices not disputed by Commercial Union are immediately due and payable in full. All of the invoices set forth on Exhibit 2 have been timely rendered, have not been timely disputed by Commercial Union, and are overdue and payable in full.

36. Commercial Union is in material breach of the Commercial Union Defense Agreement, attached as Exhibit 1, by failing and refusing, and continuing to fail and refuse, timely to reimburse Celanese pursuant to the Commercial Union Defense Agreement.

37. As a direct and proximate result of the foregoing breach of contract, Celanese is entitled to direct, indirect, consequential and incidental damages, and interest, according to proof at trial.

COUNT II
(Declaratory Judgment Against Commercial Union
Pursuant to the Commercial Union Defense Agreement)

38. Celanese repeats and realleges the allegations set forth in paragraphs 1 through 37, above, as though fully set forth herein, and further alleges as follows:

39. Commercial Union is obligated timely to reimburse Celanese for costs of defense of the Asbestos Bodily Injury Claims and the Chemical Exposure/Product Liability Bodily Injury Claims, as set forth in the Commercial Union Defense Agreement, on an ongoing and continuing basis.

40. By this complaint Celanese seeks a declaration and order (i) requiring Commercial Union to pay in full all future invoices rendered pursuant to the Commercial Union Settlement Agreement; (ii) to make such payments within thirty (30) days after the date of each invoice; (iii) preventing Commercial Union from terminating or withdrawing from the

Commercial Union Defense Agreement; (iv) requiring Commercial Union to comply with all other terms and conditions of the Commercial Union Settlement Agreement; and (v) if and to the extent necessary or appropriate, providing security for such compliance.

41. In addition to the foregoing, Celanese seeks an order providing for all appropriate and ancillary relief, including (without limitation) interest, attorneys' fees and avoidance of any purported limitation on remedies for breach, in the event of a breach by Commercial Union of said declaration and order or its future obligations pursuant to the Commercial Union Settlement Agreement.

COUNT III
(Breach of Contract Against Commercial
Union Pursuant to The Photo Resist Agreement)

42. Celanese repeats and realleges the allegations set forth in paragraphs 1 through 33, above, as though fully set forth herein, and further alleges as follows:

43. Commercial Union is obligated to reimburse Celanese for quarterly invoices rendered pursuant to the Photo Resist Agreement. All of the invoices set forth on Exhibit 4 have been timely rendered to Commercial Union, have not been disputed by Commercial Union and are overdue and payable in full.

44. Commercial Union is in material breach of the Photo Resist Agreement, attached as Exhibit 5, by failing and refusing, and continuing to fail and refuse timely, to reimburse Celanese pursuant to the Photo Resist Agreement.

45. As a direct and proximate result of the foregoing breaches of contract by Commercial Union, Celanese is entitled to direct, indirect, consequential and incidental damages and interest according to proof at trial.

COUNT IV
(Declaratory Judgment Against
Commercial Union Pursuant to the Photo Resist Agreement)

46. Celanese repeats and realleges the allegations set forth in paragraphs 1 through 33 and 42 through 45, above, as though fully set forth herein, and further alleges as follows:

47. Commercial Union is obligated to reimburse Celanese for costs of defense of the Photo Resist Claims, as set forth in the Photo Resist Agreement, on an ongoing and continuous basis.

48. By this complaint Celanese seeks a declaration and order (i) requiring Commercial Union to pay in full all future invoices rendered pursuant to the Photo Resist Agreement; (ii) to make such payments within thirty (30) days after the date of the invoice; (iii) preventing Commercial Union from terminating or withdrawing from the Photo Resist Agreement; (iv) requiring Commercial Union to comply with all other terms and conditions of the Photo Resist Agreement; and (v) if and to the extent necessary and appropriate, providing security for such compliance.

49. In addition to the foregoing, Celanese seeks an order providing for all appropriate and ancillary relief, including (without limitation) interest, attorneys fees and avoidance of any purported limitation on remedies for breach, in the event of a breach by Commercial Union of said declaration and order or of its future obligations pursuant to the Photo Resist Agreement.

COUNT V
(Breach of Contract Against Commercial Union
Under Liability Insurance Policies: Duty to Defend)

50. Celanese repeats and incorporates by reference the allegations contained in paragraphs 1 through 33, above, as though fully stated herein, and further alleges as follows:

51. Commercial Union has an affirmative duty to investigate, defend Celanese fully from and against the Liability Suits, pursuant to the terms of the Liability Insurance Policies and applicable law, where there is a mere possibility of coverage, even if the allegations are groundless, false or fraudulent.

52. Commercial Union has failed and refused timely to investigate fully, defend fully, reimburse fully Celanese's defense and investigation costs, or fully to acknowledge its insuring obligations to Celanese.

53. By its failure and refusal fully to investigate, defend, or reimburse Celanese's defense and investigation costs incurred as a result of the Liability Suits, Commercial Union has materially breached each of the Liability Insurance Policies.

54. As a direct and proximate result of Commercial Union's material breaches of contract, Celanese has suffered, and is entitled to recover, direct, indirect, consequential and incidental damages in an amount to be determined at trial.

COUNT VI
(Breach of Contract Against Commercial Union Under
Liability Insurance Policies; Duty to Indemnify [PhotoResist])

55. Celanese repeats and incorporates by reference the allegations contained in paragraphs 1 through 33, above, as though fully set forth herein, and further alleges as follows:

56. Commercial Union had and has an affirmative obligation to pay covered claims under the Liability Insurance Policies. The PhotoResist Settlement referred to in paragraph 33, above, was paid on claims covered by the Commercial Union Liability Insurance Policies.

57. Despite timely tender and demand therefor, Commercial Union has failed and refused to pay any part or portion, or all, of the \$995,000 Photo Resist settlement payment.

58. By its failure and refusal to pay for any part or portion, or all, the Photo Resist settlement payment, Commercial Union has materially breached each of the Liability Insurance Policies.

59. As direct and proximate result of Commercial Union's material breach of contract, Celanese has suffered, and is entitled to recover, direct, indirect, consequential and incidental damages in an amount to be determined at trial.

COUNT VII
(Declaratory Judgment Under
Liability Insurance Policies Against Commercial Union)

60. Celanese repeats and incorporates by reference the allegations contained in paragraphs 1 through 33, above, as though fully set forth herein, and further alleges as follows:

61. Commercial Union is obligated, under the Liability Insurance Policies and applicable law, to investigate, defend, reimburse and indemnify Celanese completely from and against the Liability Suits. Commercial Union disagrees with these assertions. An actual and justiciable controversy exists between Celanese and Commercial Union concerning Commercial Union's obligations under the Liability Insurance Policies.

62. Celanese seeks a declaration and order that the Liability Insurance Policies provide coverage for the Liability Suits. Based on the expansive language contained in the Liability Insurance Policies and consistent with applicable law, Celanese seeks the following declarations:

- (a) That Commercial Union is obligated to defend and/or reimburse defense and investigatory expenses and pay in full Celanese's legal liabilities in connection with the Liability Suits, including, without limitation, all sums paid in settlement and reimbursement of defense and investigation of these suits;
- (b) That the duty to defend or to reimburse defense and investigation expenses for the Liability Suits is joint and indivisible;

- (c) That Celanese may select the policy or policies, and the policy year or policy years, to which to allocate defense and indemnity costs, or damages, arising from the Liability Suits;
- (d) That Celanese is not required to pay for self-insured, insolvent or uninsured years or policies, deductibles or self-insured retentions for the Liability Suits as long as it has available “real” insurance that is responsive to these lawsuits;
- (e) That a “continuous injury” trigger of coverage applies to the Liability Suits;
- (f) That self-insurance, insolvent policies of insurance, deductibles, self-insured retentions and retained limits do not constitute “other insurance” within the context of the liability insurance policies at issue in this case;
- (g) That Celanese is not obligated to pay any portion of defense and indemnity costs for the Liability Suits, of insolvent insurers, or otherwise unavailable policies, as long as it has available insurance that covers such liabilities;
- (h) That the duty to pay or reimburse defense costs is unlimited and supplemental and that such duty is invoked whenever there is any evidence of coverage, even if the policy instruments are incomplete, lost or missing; and
- (i) Commercial Union is required to pay “all sums” imposed on Celanese in defense and settlement of the Liability Suits pursuant to the Liability Insurance Policies.

63. A judicial declaration is necessary and appropriate at this time, and under the circumstances alleged above, so that Celanese may ascertain its rights under the Liability Insurance Policies.

COUNT VIII
(Breach of Implied Covenant of Good
Faith and Fair Dealing Against Commercial Union)

64. Celanese repeats and incorporates by reference the allegations contained in Paragraphs 1 through 63 above as though fully set forth herein, and further alleges as follows:

65. At all times relevant, Commercial Union has been engaged in the trade or business of issuing comprehensive general liability policies, including (without limitation) the Liability Insurance Policies which are the subject of this action, and in administering and handling claims thereunder.

66. The Liability Insurance Policies issued by Commercial Union to Celanese are contracts and, as such, contain an implied covenant of good faith and fair dealing.

67. The Commercial Union Settlement Agreement and Photo Resist Agreement are contracts and, as such, contain an implied covenant of good faith and fair dealing.

68. Commercial Union has failed and refused to honor its contractual obligations to Celanese and has otherwise failed and refused to acknowledge, accept or undertake its insuring obligations with respect to the Liability Suits.

69. Commercial Union has willfully and knowingly breached the implied covenant of good faith and fair dealing. Furthermore, Commercial Union is in continuing material breach of its obligations under the Commercial Union Settlement Agreement and under the Photo Resist Agreement and therefore cannot rely upon any purported limitation on remedies, including (without limitation) any purported limitation on the ability of Celanese to seek the foregoing remedy for willful and continuing breach of its obligations.

70. As a direct and proximate result of Commercial Union's purposeful breaches of the implied covenant of good faith and fair dealing, Celanese has suffered, and is entitled to recover, direct, indirect, consequential and incidental damages in an amount to be determined at trial.

COUNT IX
(Tortious Interference
with Contract Against Resolute)

71. Celanese repeats and incorporates by reference the allegations contained in Paragraphs 1 through 70 above as though fully stated herein, and further alleges as follows.

72. Celanese has insurance contracts with Commercial Union. Pursuant to these contracts, Commercial Union is obligated to pay in full Celanese's costs of defense and Celanese's legal liabilities, including all sums spent in defense and settlement, in connection with the Liability Suits.

73. Celanese also entered into certain defense cost sharing agreements with Commercial Union, as alleged herein.

74. On information and belief, Resolute has willfully and purposefully induced Commercial Union materially to breach each of the Liability Insurance Policies, the Commercial Union Settlement Agreement and the Photo Resist Agreement.

75. As a direct and proximate cause of Resolute's tortious interference with Celanese's contracts, Celanese has suffered direct, indirect, consequential and incidental damages in an amount to be determined at trial.

COUNT X
(G.L. c. 93A -- Unfair and Deceptive Trade Practices
Against Commercial Union, Potomac and Resolute)

76. Celanese repeats and incorporates by reference the allegations contained in Paragraphs 1 through 75 above as though fully set forth herein, and further alleges as follows:

77. At all times relevant, defendants have been engaged in the trade or business of insurance in the Commonwealth of Massachusetts.

78. Defendants have willfully and knowingly violated, in whole or in part, the provisions of G.L. c. 176D § 3. Such conduct in and of itself constitutes unfair and deceptive acts and practices within the meaning of G.L. c. 93A.

79. By the actions alleged herein, defendants' conduct constitutes unfair and deceptive acts and practices in the conduct of trade or commerce in violation of Mass. Gen. Laws ch. 93A, §§ 2, *et seq.*, and actionable under § 11.

80. Defendants' unfair and deceptive acts and practices took place primarily and substantially in the Commonwealth of Massachusetts.

81. Defendants' conduct has been a knowing and willful violation of Mass. Gen. Laws ch. 93A, §§ 2 and 11 and ch. 176D, § 3.

82. As a direct and proximate result of these unlawful actions, Celanese has suffered, and continues to suffer, direct, indirect, consequential and incidental damages. Celanese is entitled to treble damages and reasonable attorneys' fees in an amount to be determined at trial.

COUNT XI
(Conspiracy Against
Commercial Union, Potomac and Resolute)

83. Celanese repeats and incorporates by reference the allegations contained in paragraphs 1 through 82 above as though fully stated herein, and further alleges as follows:

84. Commercial Union's payments under the Liability Insurance Policies, the Commercial Union Settlement Agreement and the Photo Resist Agreement are stated by Commercial Union to be derived from a reinsurance relationship it has with NICO, the parent of which is also the parent of Resolute. Resolute is stated to be the claims handler for Commercial Union and is alleged to be different and independent from Commercial Union. Commercial Union is a subsidiary of White Mountains, which is also beneficially owned in part by the ultimate parent of Resolute and the reinsurers of Commercial Union, but which is stated to be

separate and distinct from White Mountains, Resolute, and NICO. Potomac is stated to be the owner of Commercial Union's asbestos and environmental loss reserves and to be a "conduit" for reinsurance between Commercial Union and NICO. However, Potomac is stated to be separate and distinct from Commercial Union and neither a subsidiary nor under the control of Commercial Union.

85. Resolute, Potomac and Commercial Union have conspired to deprive Celanese of monies and benefits due to it pursuant to the Liability Insurance Policies, the Commercial Union Settlement Agreement, and the Photo Resist Agreement, thereby depriving Celanese of known rights.

86. As a direct and proximate cause of this conspiracy, Celanese has suffered direct, indirect, consequential and incidental damages in an amount to be determined at trial.

87. Should additional members of this conspiracy be identified in discovery or otherwise this complaint shall be amended explicitly to name as defendants those additional co-conspirators described by the allegations herein.

COUNT XII
(G.L. c. 93A -- Unfair and
Deceptive Concert of Action Against
Commercial Union, Potomac and Resolute)

88. Celanese repeats and incorporates by reference the allegations contained in paragraphs 1 through 87 above as though fully stated herein, and further alleges as follows:

89. Commercial Union's payments under the Liability Insurance Policies, the Commercial Union Settlement Agreement and the Photo Resist Agreement are stated by Commercial Union to be derived from a reinsurance relationship it has with NICO, the parent of which is also the parent of Resolute. Resolute is stated to be the claims handler for Commercial Union and is alleged to be different and independent from Commercial Union. Commercial

Union is a subsidiary of White Mountains, which is also beneficially owned in part by the ultimate parent of Resolute and the reinsurers of Commercial Union, but which is stated to be separate and distinct from White Mountains, Resolute, and NICO. Potomac is stated to be separate and distinct from Commercial Union and neither a subsidiary nor under the control of Commercial Union.

90. Resolute, Potomac and Commercial Union have acted in concert to deprive Celanese of known moneys and benefits due to it pursuant to the Liability Insurance Policies, the Commercial Union Settlement Agreement, and the Photo Resist Agreement, thereby depriving Celanese of known rights.

91. As a direct and proximate cause of this concert of action, Celanese has suffered direct, indirect, consequential and incidental damages in an amount to be determined at trial.

92. Should additional persons be identified in discovery or otherwise as acting in concert with these defendants to deprive Celanese of known rights, this complaint shall be amended explicitly to name as defendants those additional actors described by the allegations herein.

PRAYERS FOR RELIEF

WHEREFORE, Celanese requests the following relief:

1. On the First, Third, Fifth and Seventh Counts, that the Court award to Celanese direct, indirect consequential and incidental damages, with interest in the maximum amount allowed by law, according to proof at trial;
2. On the Second Count, for a declaration and order (i) requiring Commercial Union to pay in full all future invoices rendered pursuant to the Commercial Union Settlement Agreement; (ii) to make such payments within thirty (30) days

after the date of each invoice; (iii) preventing Commercial Union from terminating or withdrawing from the Commercial Union Settlement Agreement; and (iv) requiring Commercial Union to comply with all other terms and conditions of the Commercial Union Settlement Agreement.

3. On the Fourth Count, for a declaration and order (i) requiring Commercial Union to pay in full all future invoices rendered pursuant to the Photo Resist Agreement; (ii) to make such payments within thirty (30) days after the date of the invoice; (iii) preventing Commercial Union from terminating or withdrawing from the Photo Resist Agreement; and (iv) requiring Commercial Union to comply with all other terms and conditions of the Photo Resist Agreement.
4. On the Sixth Count, for a declaration and order:
 - (a) That Commercial Union is obligated to defend and/or reimburse defense and investigatory expenses and pay in full Celanese's legal liabilities in connection with the Liability Suits, including, without limitation, all sums paid in settlement and reimbursement of defense and investigation of these suits;
 - (b) That the duty to defend or to reimburse defense and investigation expenses for the Liability Suits is joint and indivisible;
 - (c) That Celanese may select the policy or policies, and the policy year or policy years, to which to allocate defense and indemnity costs, or damages, arising from the Liability Suits;
 - (d) That Celanese is not required to pay for self-insured, insolvent or uninsured years or policies, deductibles or self-insured retentions for the

Liability Suits as long as it has available “real” insurance that is responsive to these lawsuits;

- (e) That a “continuous injury” trigger of coverage applies to the Liability Suits;
- (f) That self-insurance, insolvent policies of insurance, deductibles, self-insured retentions and retained limits do not constitute “other insurance” within the context of the liability insurance policies at issue in this case;
- (g) That Celanese is not obligated to pay any portion of defense and indemnity costs for the Liability Suits, of insolvent insurers, or otherwise unavailable policies, as long as it has available insurance that covers such liabilities; and
- (h) That the duty to pay or reimburse defense costs is unlimited and supplemental and that such duty is invoked whenever there is any evidence of coverage, even if the policy instruments are incomplete, lost or missing; and
- (i) Commercial Union is required to pay “all sums” imposed on Celanese in defense and settlement of the Liability Suits pursuant to the Liability Insurance Policies.

5. On the Eighth and Ninth Counts, that the Court award to Celanese direct, indirect consequential and incidental damages, with interest in the maximum amount allowed by law, according to proof at trial;

6. On the Tenth Count, that the Court award to Celanese multiple damages in the maximum amount allowed by law and attorneys' fees, in an amount to be determined at trial, for defendants' violations of Mass. Gen. Laws ch. 93A;
7. In addition to the foregoing, on the Eighth, Ninth, Eleventh and Twelfth Counts for money damages against Commercial Union equal to the sums wrongfully delayed or withheld from Celanese from the date of the initial filing of the complaint, up through the date of payment or judgment, whichever is later, multiplied by a factor of 17, which is the applicable price-earnings ratio of Commercial Union's parent, White Mountains, and which represents the actual benefit achieved by Commercial Union as a result of its wrongful conduct as alleged herein.
8. On the Tenth, Eleventh and Twelfth Counts, against Commercial Union, Potomac and Resolute, as follows:
 - (a) For money damages as determined at trial;
 - (b) For punitive or exemplary damages sufficient to deter such wrongful conduct by these defendants and others similarly situated;
 - (c) For punitive or exemplary damages in an amount sufficient to be deemed "material" by the chief financial officers and the respective internal and external auditors of the publicly-traded parent companies of each of Commercial Union and Resolute;
 - (d) For punitive and exemplary damages in an amount sufficient to require disclosure of the wrongful acts complained-of here to the shareholders and to members of the public that are past or prospective shareholders of

the publicly-traded parent companies of each of Commercial Union and Resolute, including (without limitation) by way of 10K, 10Q and 8K reports required by the Securities and Exchange Commission and by any and all applicable rules of the New York Stock Exchange.

9. On all Counts, that the Court awards to Celanese its reasonable fees, costs and expenses including attorneys' fees;
10. On all Counts, that the Court award to Celanese any and all further and other relief to which Celanese may be entitled at law or in equity.

JURY DEMAND

Celanese International Corporation demands a trial by jury on all issues so triable.



Jeffrey W. Moss, BBO# 552421
Morgan, Lewis & Bockius LLP
225 Franklin Street, Suite 1705
Boston, Massachusetts 02110
Tel: 617.451.9700
Fax: 617.451.9710
Email: jmoss@morganlewis.com

Michael John Miguel, BBO #565942
Morgan, Lewis & Bockius LLP
300 South Grand Avenue
Los Angeles, California 90071
Tel: 213.612.2500
Fax: 213.612.2501
Email: mjmiguel@morganlewis.com

Attorneys for Celanese International Corporation

Dated: December 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above-referenced document(s) was served upon the attorney(s) of record, on 12/27/06, by:
☐ hand; ☐ fax; ☐ email; ☒ U.S. mail

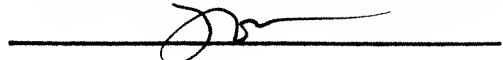


Exhibit “1”

**DEFENSE COST SHARING AGREEMENT BETWEEN
COMMERCIAL UNION AND HOECHST CELANESE CORPORATION**

This Agreement is entered into between Commercial Union Insurance Companies ("Commercial Union") and Hoechst Corporation, F/K/A Hoechst Celanese Corporation, F/K/A Celanese Corporation, F/K/A Celanese Corporation of America, Inc., F/K/A American Cellulose and Chemical Manufacturing Company ("HCC"). Hoechst Celanese Corporation is contracting on behalf of itself for its own benefit and also for that of its predecessor companies, whose liabilities and assets it has assumed, including, but not limited to, Hoechst Celanese Corporation, Celanese Corporation, Celanese Corporation of America, and American Cellulose and Chemical Manufacturing Company. For all of the above HCC companies, "HCC" shall also mean their respective past and present subsidiaries, affiliated companies in which Hoechst AG has a majority interest, joint ventures, partners, predecessors-in-interest, successors-in-interest, and their respective directors, officers, agents, and employees and any interest or entity in which HCC has a controlling interest. However, this Agreement does not include American Hoechst Corporation or any of its subsidiaries, affiliates, joint ventures, partners, predecessors-in-interest, successors-in-interest, assigns and its respective directors, officers, agents, and employees.

WHEREAS, HCC has alleged that Commercial Union issued primary general liability insurance policies with the following policy nos. 131LC2; 131LC3; 131CLC4; CL13110; CY-9500-002; EY-9500-002; and EY-9500-034 (the "Alleged Insurance Policies") to Celanese Corporation N/K/A HCC from June 1, 1965 to January 1, 1972; and

WHEREAS, HCC has been named a defendant or third-party defendant in civil actions in which it is alleged by various claimants that asbestos products allegedly manufactured,

sold, handled, used or distributed by HCC to which they were exposed, allegedly caused them to suffer bodily injury ("Asbestos Bodily Injury Claims"); and

WHEREAS, HCC has also been named a defendant or a third-party defendant in civil actions in which it is alleged by various claimants that chemicals and/or products allegedly sold, handled, distributed, used or disposed of by HCC to which they were exposed, allegedly caused them to suffer bodily injury ("Chemical Exposure/Products Bodily Injury Claims"); and

WHEREAS, a dispute currently exists between Commercial Union and HCC (hereinafter "the Parties") as to their respective rights and obligations under the Alleged Insurance Policies concerning the defense and indemnification of HCC in connection with the Asbestos Bodily Injury Claims and the Chemical Exposure/Product Bodily Injury Claims; and

WHEREAS, this Agreement is intended to resolve only those issues relating to the defense of those Asbestos Bodily Injury Claims and Chemical Exposure/Product Bodily Injury Claims which are still pending, and thus, this Agreement does not involve defense and/or indemnity costs for "capped," i.e. settled claims; and

WHEREAS, Commercial Union does not admit to the existence of all Alleged Insurance Policies or their applicability to the Asbestos Bodily Injury Claims and Chemical Exposure/Product Bodily Injury Claims;

WHEREAS, nothing in this Agreement is intended to alter, delete, change or modify any term, condition, obligation or policy exclusion of any policy issued by Commercial Union to HCC; and

WHEREAS, this Agreement is negotiated and freely entered into by the Parties to establish an orderly, non-litigated format for Commercial Union's participation in and/or

reimbursement of HCC's defense with respect to claims and lawsuits arising from the Asbestos Bodily Injury Claims and Chemical Exposure/Products Bodily Injury Claims; and

WHEREAS, by subscribing to this Agreement, neither party relinquishes, waives, or admits the existence of coverage under any of the Alleged Insurance Policies.

NOW, THEREFORE, in consideration of the mutual promises hereinafter made, it is hereby agreed as follows:

1. HCC has identified all known Asbestos Bodily Injury Claims and Chemical Exposure/Products Bodily Injury Claims which are listed in their entirety on Exhibit "A," and it is agreed that HCC is forever barred from seeking defense costs from Commercial Union for any such claim which was existing or known to HCC but not listed on Exhibit "A" on or prior to the effective Date of this Agreement, except for any claims involved in existing coverage litigation.

2. Commercial Union will reimburse HCC for one-sixth (1/6) of HCC's reasonable and necessary defense costs and will participate in contributing one-sixth (1/6) of HCC's future defense costs for only those Asbestos Bodily Injury Claims and Chemical Exposure/Products Bodily Injury Claims listed on Exhibit "B."

3. The parties agree that "new" or pending claims which have been recently noticed may become subject to this Agreement by Addendum which will become Exhibit "C."

Upon mutual consent of the Parties, additional claims may be added to Exhibit "C" by having the Parties countersign the bottom of Exhibit "C" each time a new claim is agreed to be governed by the terms of this Agreement.

4. This Agreement contemplates that in the event a disagreement arises with respect to the defense of any particular claim, the filing of a suit will only nullify this Agreement

with respect to that particular claim, and the Agreement will remain intact as to all remaining claims.

5. Should a court of competent jurisdiction declare, rule or hold that Commercial Union is under no obligation to represent and/or defend HCC in connection with a particular claim, Commercial Union is fully and completely relieved of its obligation for that claim under this Agreement.

6. This Agreement and its terms shall remain confidential. The Parties may disclose the terms hereof only to their respective attorneys, in any action by either party to enforce the terms of this Agreement, by written agreement of the Parties, to HCC's other insurers, representatives, Enviro-Tox Loss Services, Inc., and to reinsurers, auditors, and financial regulators. Other than as expressly provided for in this paragraph, neither HCC nor Commercial Union shall disclose the terms of this Agreement to any third-party unless so ordered by a court of law. In the event that a third-party seeks disclosure of this Agreement in any lawsuit or administrative proceeding, either of the Parties hereto will notify the other Party, and if requested by one Party, the other Party will state its opposition to such disclosure.

7. The initial term of this Agreement shall be for a period of three years beginning on the effective date of the Agreement. Either party to this Agreement may withdraw for any reason by giving the other Party to this Agreement at least 60 days written notice by certified mail to the following persons:

HCC: Teresa L. Garrison
Hoechst Celanese Corporation
30 Independence Blvd.
P.O. Box 4915
Warren, NJ 07060-4915
Telephone: (908) 231-4517
Fax (908) 231-3156

with a copy to:

Larry Poling
Enviro-Tox Loss Services, Inc.
5628 Southwest Green Oaks Blvd.
Suite A
Arlington, TX 76017
Telephone: (817) 561-9675
Fax: (817) 561-9678

Commercial Union:

Gene Waymon
Commercial Union Insurance Company
One Beacon Street
Boston, MA 02108
Telephone: (617) 725-6686
Fax: (617) 725-6692

with a copy to:

Howard M. Tollin, Esq.
Rivkin, Radler & Kremer
EAB Plaza, West Tower
Uniondale, NY 11556-0111
Telephone: (516) 357-3000
Fax: (516) 357-3333

This Agreement may be amended, supplemented, or nullified only by a writing signed by or on behalf of one of the representatives identified above.

8. If any of the provisions of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. In such event, the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable

provision has never comprised a part of the Agreement, and the remaining provisions of the Agreement shall remain in full force and effect.

9. This Agreement is without prejudice or value as precedent, and shall not be used in any proceeding or hearing to create, prove, or interpret the obligations under, or terms and conditions of, any other agreement, the Alleged Insurance Policies, or any other insurance policy. It is understood and agreed that nothing herein shall be construed as a waiver, estoppel or invalidation of any position that the Parties have taken or may take in the future with respect to any coverage claims or defenses. Commercial Union denies that it has an obligation at this time to indemnify HCC for any settlement by or judgment against HCC arising from any of the claims subject hereto. This Agreement is a compromise with respect to HCC's defense costs for claims identified on Exhibits "B" and "C," and has no effect on indemnity. This Agreement nullifies any claims of bad faith, breach of contract, breach of duty, sanctions, violations, exemplary or extra contractual damages arising from, or in connection with, any purported defense obligation by Commercial Union for claims listed on Exhibits "B" and "C." Commercial Union expressly reserves its rights under the Alleged Insurance Policies, and may assert any coverage defenses with respect to both defense and indemnity for any past, present and future claim tendered by HCC to Commercial Union.

10. HCC shall be responsible for the appointment of outside defense counsel to properly defend and vigorously represent its interests as the insured. HCC, or its appointed representative, shall designate, manage, supervise and control the defense of HCC and its designated outside counsel. However, Commercial Union will be billed for one-sixth (1/6) of the defense costs for claims identified on Exhibits "B" & "C" after HCC or its representative reviews the legal invoices and approves the amount which represents reasonable and necessary defense

costs in compliance with the "Case Management Guidelines For Long-Term Exposure Claim Litigation," which is attached as Exhibit "D" hereto.

11. On a quarterly basis, HCC will submit all legal invoices to Commercial Union for those claims listed on Exhibits "B" and "C," accompanied by a cover letter identifying all claims for which legal invoices are being submitted, the total amount of defense costs for each particular claim, a brief summary of the work performed during the quarter and its purpose, and Commercial Union's one-sixth (1/6) share which HCC or its representative has approved for payment. Commercial Union will then within thirty (30) days pay all uncontested charges, and raise inquiries about a disputed charge with particularity. The Parties will then negotiate in good faith any disputed charges.

12. Commercial Union retains the right to request reasonable backup documentation and specific items in order to verify that work billed has been performed as described. An independent legal auditor selected mutually by Commercial Union, HCC and HCC's other insurers may be retained to analyze certain past legal costs, possibly negotiate a reduction, and may assist in providing guidance for the efficient expenditure of future defense costs. The submission of documents to Commercial Union, or the review of documents by Commercial Union or a legal auditor, shall not be considered a waiver of any attorney-client privilege including any that may be asserted in connection with a coverage dispute unless that document is requested and produced during the coverage dispute.

13. Commercial Union may request an annual budget for expected necessary work to be performed. Also, an annual meeting will be held during which HCC and its counsel will provide Commercial Union and HCC's other insurers with the status and developments on

all significant cases in which defense costs are being incurred, an explanation of overall strategy and litigation plans, and a current evaluation of liability, damages and settlement possibilities.

14. Commercial Union agrees that it will not seek to recover from any person and/or entity, including but not limited to other insurers of HCC, defense costs paid pursuant to this Agreement to the extent that such other persons and/or entities, including but not limited to other insurers of HCC, do not seek to recover from Commercial Union amounts paid to, or on behalf of, HCC.

15. This Agreement is an integrated agreement and constitutes the entire understanding between the Parties, and replaces, cancels and supersedes any and all letters, communications, prior agreements, understandings or undertakings of the Parties, including any prior position the Parties may have asserted with respect to a particular claim.

16. The individuals who have executed this Agreement on behalf of the Parties expressly represent that they are authorized to sign on behalf of the Parties for the purpose of binding the Parties to this Agreement.

17. This Agreement shall be construed in accordance with the substantive laws of Delaware without giving effect to Delaware choice of law or conflict of law provisions. Nothing in this provision will have any effect on selection of law for interpretation of the Alleged Insurance Policies.

18. The Effective Date of this Agreement shall be the date upon which the last Party signs the Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates shown below:

**DEFENSE COST SHARING AGREEMENT
BETWEEN COMMERCIAL UNION AND
HOECHST CELANESE CORPORATION**

SIGNATURE PAGE

The signing of this page by a duly authorized representative of Commercial Union Insurance Company constitutes a valid execution by Commercial Union of the Defense Cost Sharing Agreement entered into by and between Hoechst Celanese Corporation and Commercial Union Insurance Company.

COMMERCIAL UNION INSURANCE COMPANY

By: Gene Waymon
(Signature)

Name: GENE WAYMON
(Print)

Title: CONSULTANT

Dated 2/24/98

Witnessed this 24th day of
February, 1998

By: Martin B. Cohen
(Signature)

Name: MARTIN B. COHEN
(Print)

Address: Commercial Union, Inc. Co.

One Beacon St., Boston, MA

DEFENSE COST SHARING AGREEMENT
BETWEEN COMMERCIAL UNION AND
HOECHST CELANESE CORPORATION

SIGNATURE PAGE

The signing of this page by a duly authorized representative of Hoechst Celanese Corporation constitutes a valid execution by Hoechst Celanese Corporation of the Defense Cost Sharing Agreement entered into by and between Hoechst Celanese Corporation and Commercial Union Insurance Company.

HOECHST CELANESE CORPORATION

By: *Teresa L. Garrison*
(Signature)

Name: TERESA L. GARRISON
(Print)

Title: CASUALTY INSURANCE MANAGER

Dated MARCH 27, 1998

Witnessed this 27 day of
~~February~~, 1998
MARCH

By: *Marcia A. Kraus*
(Signature)

Name: MARCIA A. KRAUS
(Print)

Address: P.O. Box 4915

WARREN, NJ 07060-4915

Exhibit “2”

Commercial Union
Quarterly Billings, Recoveries
& Outstanding Balances for Asbestos Claims

QUARTER	DATE SENT TO COMMERCIAL UNION	ASBESTOS BILLED	ASBESTOS RECEIVED	DATE OF PAYMENT	CHECK #	ASBESTOS OUTSTANDING
1st Quarter 2002	5/13/2002	\$ 308,497.99	\$ 308,497.99	9/4/2002	RK77575-1	
2nd Quarter 2002	8/6/2002	\$ 325,403.57	\$ 325,403.57	9/25/2002	RL35651-5	
3rd Quarter 2002	10/17/2002	\$ 529,184.15				
4th Quarter 2002 - Premises	1/24/2003	\$ 504,883.83	\$ 504,883.83	6/2/2004	SD91775-1	529,184.15
4th Quarter 2002 - Products	1/24/2003	\$ 7,390.30				
1st Quarter 2003 - Premises	5/5/2003	\$ 266,255.96	\$ 266,255.96	6/2/2004	SD91776-2	7,390.30
1st Quarter 2003 - Products	5/5/2003	\$ 4,170.32				
2nd Quarter 2003 - Premises	7/28/2003	\$ 653,257.53	\$ 653,257.53	6/2/2004	SD91783-2	4,170.32
2nd Quarter 2003 - Products	7/28/2003	\$ 5,662.57				
3rd Quarter 2003 - Premises	10/24/2003	\$ 486,199.03	\$ 486,199.03	6/2/2004	SD91773-6	5,662.57
3rd Quarter 2003 - Products	10/24/2003	\$ 11,769.17				
4th Quarter 2003 - Premises	1/6/2004	\$ 478,543.95	\$ 478,543.95	6/2/2004	SD91774-0	11,769.17
4th Quarter 2003 - Products	1/6/2004	\$ 23,500.69				
1st Quarter 2004 - Premises	4/7/2004	\$ 177,391.01	\$ 177,391.01	1/27/2005	WD04909-3	23,500.69
1st Quarter 2004 - Products	4/7/2004	\$ 6,833.17	\$ 6,833.17	11/10/2004	WD02943-4	
2nd Quarter 2004 - Premises	8/17/2004	\$ 413,476.38				413,476.38
2nd Quarter 2004 - Products	8/17/2004	\$ 20,600.74				20,600.74
3rd Quarter 2004 - Premises	10/25/2004	\$ 572,739.76				572,739.76
3rd Quarter 2004 - Products	10/25/2004	\$ 14,900.64				
4th Quarter 2004 - Premises	1/19/2005	\$ 373,799.33				14,900.64
4th Quarter 2004 - Products	1/19/2005	\$ 25,789.85				373,799.33
1st Quarter 2005 - Premises	5/4/2005	\$ 354,387.66				25,789.85
1st Quarter 2005 - Products	5/4/2005	\$ 11,440.51				354,387.66
2nd Quarter 2005 - Premises	8/15/2005	\$ 484,921.51				11,440.51
2nd Quarter 2005 - Products	8/15/2005	\$ 211,184.25				484,921.51
3rd Quarter 2005 - Premises	11/8/2005	\$ 124,474.72				211,184.25
3rd Quarter 2005 - Products	11/8/2005	\$ 88,473.22				124,474.72
4th Quarter 2005 - Premises	2/3/2006	\$ 242,832.96				88,473.22
4th Quarter 2005 - Products	2/3/2006	\$ 127,725.35				242,832.96
1st Quarter 2006 - Premises	4/7/2006	\$ 103,515.31				127,725.35
1st Quarter 2006 - Products	4/7/2006	\$ 58,595.90				103,515.31
						58,595.90
TOTAL DUE FROM COMMERCIAL UNION FOR ASBESTOS CLAIMS		\$ 7,017,801.33	\$ 3,207,266.04			\$ 3,810,535.29

Commercial Union
Quarterly Billings, Recoveries
& Outstanding Balances for Chemical Claims

QUARTER	DATE SENT TO CU	CHEMICAL BILLED	CHEMICAL RECEIVED	DATE OF PAYMENT	CHECK #	CHEMICAL OUTSTANDING
1st Quarter 2002	5/13/2002	\$ 90,728.90	\$ 90,728.90	9/4/2002	RK77576-2	\$
2nd Quarter 2002	8/6/2002	\$ 178,292.64	\$ 178,292.64	9/25/2002	RL35650-4	\$
3rd Quarter 2002	10/17/2002	\$ 105,650.65				\$
4th Quarter 2002 - Premises	1/24/2003	\$ 202,453.88	\$ 202,453.88	6/2/2004	SD91782-1	\$ 105,650.65
4th Quarter 2002 - Products	1/24/2003	\$ 6,109.95				\$
1st Quarter 2003 - Premises	5/5/2003	\$ 87,120.57	\$ 87,120.57	6/2/2004	SD91778-4	\$ 6,109.95
1st Quarter 2003 - Products	5/5/2003	\$ 2,136.22				\$
2nd Quarter 2003 - Premises	7/28/2003	\$ 112,886.54	\$ 112,886.54	6/2/2004	SD91781-0	\$ 2,136.22
2nd Quarter 2003 - Products	7/28/2003	\$ 6,564.21				\$
3rd Quarter 2003 - Premises	10/24/2003	\$ 13,959.19	\$ 13,959.19	6/2/2004	SD91779-5	\$ 6,564.21
3rd Quarter 2003 - Products	10/24/2003	\$ 50,752.57				\$
4th Quarter 2003 - Premises	1/6/2004	\$ 53,938.03	\$ 53,938.03	6/2/2004	SD91780-6	\$ 50,752.57
4th Quarter 2003 - Products	1/6/2004	\$ 26,770.01				\$
1st Quarter 2004 - Premises	4/7/2004	\$ 20,826.84	\$ 20,826.84	10/18/2004	WD02228-3	\$ 26,770.01
1st Quarter 2004 - Products	4/7/2004	\$ 9,624.71	\$ 9,624.71	11/10/2004	WD02942-3	\$
2nd Quarter 2004 - Premises	8/17/2004	\$ 59,519.70				\$
2nd Quarter 2004 - Products	8/17/2004	\$ 15,988.87				\$ 59,519.70
3rd Quarter 2004 - Premises	10/25/2004	\$ 53,110.38				\$ 15,988.87
3rd Quarter 2004 - Products	10/25/2004	\$ 36,299.47				\$ 53,110.38
4th Quarter 2004 - Premises	1/19/2005	\$ 66,617.12				\$ 36,299.47
4th Quarter 2004 - Products	1/19/2005	\$ 5,995.66				\$ 66,617.12
1st Quarter 2005 - Premises	5/4/2005	\$ 37,697.17				\$ 5,995.66
1st Quarter 2005 - Products	5/4/2005	\$ 26,828.85				\$ 37,697.17
2nd Quarter 2005 - Premises	8/15/2005	\$ 65,902.20				\$ 26,828.85
2nd Quarter 2005 - Products	8/15/2005	\$ 3,576.13				\$ 65,902.20
3rd Quarter 2005 - Premises	11/8/2005	\$ 9,843.24				\$ 3,576.13
3rd Quarter 2005 - Products	11/8/2005	\$ 5,221.49				\$ 9,843.24
4th Quarter 2005 - Premises	2/3/2006	\$ 15,240.41				\$ 5,221.49
4th Quarter 2005 - Products	2/3/2006	\$ 5,402.47				\$ 15,240.41
1st Quarter 2006 - Premises	4/7/2006	\$ 83,491.84				\$ 5,402.47
1st Quarter 2006 - Products	4/7/2006	\$ 2,977.45				\$ 83,491.84
						\$ 2,977.45
TOTAL DUE FROM COMMERCIAL UNION FOR CHEMICAL CLAIMS		\$ 1,461,527.36	\$ 769,831.30			\$ 691,696.06

Exhibit “3”

DEFENSE AGREEMENT BETWEEN CELANESE AND CELANESE INSURERS
REGARDING PHOTO RESIST CLAIMS

This Agreement is entered into between CGU Insurance f/k/a Commercial Union Insurance Companies ("Commercial Union"), Home Insurance Company ("Home"), and American Motorists Insurance Company ("AMICO") (collectively referred to as the "Celanese Insurers"), and CNA Holdings, Inc. and Celanese Americas Corporation, formerly known as HNA Holdings, Inc., Hoechst Corporation, Hoechst Celanese Corporation, Celanese Corporation, Celanese Corporation of America, Inc., and American Cellulose and Chemical Manufacturing Company (collectively referred to as "Celanese"). (The signatories to this Agreement are referred to collectively as the "Parties").

WHEREAS, Celanese has been named in several lawsuits involving computer part manufacturing, including Photo Resist chemicals and solvents (the "Lawsuits" or "Photo Resist Lawsuits"). The Lawsuits filed to date are identified on Exhibit A attached hereto, and future Lawsuits are intended to similarly be governed by this Agreement.

WHEREAS, a dispute currently exists between and among the Parties concerning the defense and indemnification of Celanese in connection with the Lawsuits.

WHEREAS, this Agreement is intended to resolve only those issues relating to defense of the Lawsuits by adopting a procedure and allocation approach for the administration and defense of Celanese in the Lawsuits.

WHEREAS, this Agreement is a compromise and accord, and does not waive any rights, defenses or positions of the Parties with respect to the Lawsuits, or any other claims Celanese has made to the Celanese Insurers, and does not alter, delete, change or modify any term, condition, obligation or policy exclusion of any policy issued by the Celanese Insurers to Celanese;

NOW, THEREFORE, in consideration of the mutual promises hereinafter made, it is hereby agreed as follows:

1. SCOPE OF AGREEMENT

A. This Agreement applies to the administration and payment of Defense Costs, as defined below. Nothing contained herein has, or shall be construed to have, any application to the indemnification for any Photo Resist Lawsuit, or any kind of claim involving Photo Resist chemicals that has been or may be asserted against Celanese.

B. The Celanese Insurers' obligations to pay Defense Costs under this Agreement is subject to any applicable limits, deductibles, self-insured retentions, retrospective premium arrangements, and other terms, provisions, and conditions in policies issued to Celanese by the Celanese Insurers. The Celanese Insurers shall have no obligation under this Agreement to respond to claims based on the alleged liability of a non-insured entity.

C. This Agreement supercedes all other representations and agreements made between Celanese and the Celanese Insurers with respect to the Photo Resist Lawsuits which are subject to this Agreement.

2. ALLOCATION AND PAYMENT OF DEFENSE COSTS

A. "Defense Costs" means (a) reasonable and necessary attorneys' fees; (b) reasonable and necessary expert fees; and (c) other reasonable and necessary out-of-pocket fees and expenses, all of which are directly attributable to the defense of Celanese in the Photo Resist Lawsuits. The term "Defense Costs" does not include (a) administrative or other expenses, including internal expenses incurred by counsel representing Celanese in the Photo Resist Lawsuits; and (b) attorneys' fees, costs and other expenses incurred by Celanese in connection with efforts it has undertaken, or will undertake to identify, secure, enforce, or interpret insurance coverage from any insurer. The Parties reserve the right to review and to

reconcile any billings submitted by underlying defense counsel to determine that they represent reasonable and necessary Defense Costs payable under this Agreement to ensure that such costs were incurred pursuant to the Celanese Case Management Guidelines for Long-Term Exposure Claim Litigation, agreed upon by the Parties, attached hereto as Exhibit B and incorporated herein by reference.

B. General Allocation.

1. If a Lawsuit involves American Hoechst Corporation or any of its affiliated companies ("AHC"), and not Celanese Corporation, the Celanese Insurers have no obligation to pay Defense Costs under this Agreement. In cases where both Celanese and AHC companies, and chemicals allegedly produced by both of those companies are at issue, Commercial Union, Home and AMICO, will each pay one-twelfth ($1/12^{\text{th}}$) of Defense Costs. If a Lawsuit involves Celanese, and not AHC, Commercial Union, Home and AMICO, will each pay one-sixth ($1/6^{\text{th}}$) of Defense Costs.

2. If a Lawsuit initially names any Celanese entity solely as successor to American Hoechst Corporation, the Celanese Insurers will initially have no duty to defend. If discovery subsequently reveals that Celanese chemicals are involved, Celanese or its representative, Enviro-Tox Loss Services ("Enviro-Tox"), will notify the Celanese Insurers, and they will begin to pay Defense Costs pursuant to the one-twelfth ($1/12^{\text{th}}$) General Allocation formula.

3. Each of the Celanese Insurer's allocated share of Defense Costs will not be modified based upon the lack of participation by an AHC or Celanese Insurer.

C. Specific Allocations

1. A Celanese Insurer shall not be responsible for "plaintiff-specific" discovery where a particular plaintiff presents no exposure to that Celanese Insurer's policy

period. If during the pendency of a Lawsuit, uncontroverted evidence is developed during discovery, or otherwise, that a Claimant's first exposure to the chemical and/or products at issue in the Lawsuits was after the expiration of a Celanese Insurer's last policy, such Insurer shall have no further obligation for Defense Costs incurred with respect to such Lawsuit and/or Claimant after the close of the month in which the Insurer notifies Celanese that it is no longer obligated for Defense Costs with respect to such Lawsuit and/or Claimant.

2. Celanese Insurers shall not be responsible for any project, chemical, or plant, involving AHC chemicals. Accordingly, underlying defense counsel will be directed to set up three billing matters for each Lawsuit if the Lawsuit involves both Celanese and AHC as follows: Celanese only, AHC only, and General. If during the pendency of a claim, uncontroverted evidence is developed during discovery, or otherwise, that Celanese chemicals were not involved, the Celanese Insurers shall have no further obligation for Defense Costs incurred with respect to such Lawsuit and/or Claimant after the close of the month in which the Insurer notifies Celanese that it is no longer obligated for Defense Costs with respect to such Lawsuit and/or Claimant.

3. This Agreement contemplates that in the event a disagreement arises with respect to the defense of any particular claim or Lawsuit, the filing of a suit will only nullify this Agreement with respect to that particular claim or Lawsuit, and the Agreement will remain in effect with respect to all remaining claims and Lawsuits.

4. If a legal task involves both Celanese and AHC, the time will be billed to the General matter number, and Celanese Insurers will pay one-twelfth (1/12th) of Defense Costs pursuant to the General Allocation formula. If the task involves AHC only, Celanese Insurers will not be billed for any costs relating to that task. If the task involves Celanese Insurers only, the Celanese Insurers will each pay one-sixth (1/6th) of the Defense Costs.

3. BILLING PROCEDURES AND MANAGEMENT OF CLAIMS

A. The Parties, and underlying defense counsel, shall abide by the requirements set forth in the Celanese Case Management Guidelines for Long-Term Exposure Claim Litigation, attached hereto as Exhibit B and incorporated by reference. In addition, defense counsel shall handle the Lawsuits in accordance with this Agreement.

B. Underlying defense counsel shall be instructed to put a plaintiff's name in parenthesis on its legal invoices when working on a "plaintiff-specific" matter. Celanese and/or its representative, Enviro-Tox, and/or any other representative selected by Celanese, shall not bill a Celanese Insurer if that insurer has no exposure for a particular plaintiff and underlying defense counsel is conducting plaintiff-specific tasks.

C. Celanese shall retain and direct underlying defense counsel to respond to the Lawsuits, and to defend those lawsuits on behalf of Celanese. Celanese shall immediately notify the Celanese Insurers of the retention of defense counsel.

D. Underlying defense counsel retained by Celanese shall provide copies of all significant correspondence, filings, motions, pleadings, discovery and other litigation-related materials to Celanese's in-house lawyers and to Enviro-Tox, and/or to any other representative selected by Celanese. Celanese and/or Enviro-Tox, and/or any other representative selected by Celanese, will promptly forward such materials to a Celanese Insurer upon a specific written request by or on behalf of that insurer.

E. Each calendar quarter, Celanese and/or Enviro-Tox, and/or any other representative selected by Celanese, will supply a detailed breakdown of legal charges for each Lawsuit, and a brief status report on each Lawsuit. The materials will include the designated billing numbers for each Lawsuit, and a breakdown of charges pursuant to the Specific Allocations referenced above. The Celanese Insurers shall further be provided with immediate

notice regarding the filing of dispositive motions, trial, settlements and judgments. In the event that any reasonable additional information is requested from a Celanese Insurer, Celanese and/or Enviro-Tox, and/or any other representative selected by Celanese, shall promptly provide such information upon request. The Celanese Insurers may request an annual budget for expected necessary work to be performed. Celanese, and its counsel, will report on significant developments and status for Lawsuits in which defense costs are being incurred and, at an annual meeting between Celanese and the Celanese Insurers, will provide an explanation of overall strategy and litigation plans, and an evaluation of liability, damages and settlement possibilities.

F. One or more insurer's violation of this Agreement, or any other agreement, will have no effect on the individual allocated shares, and rights and obligations, of the remaining Celanese Insurers under this Agreement.

4. CONFIDENTIALITY

This Agreement and its terms shall remain confidential. The Parties may disclose the terms hereof only to their respective attorneys and to the AHC Insurers and their counsel, in any action by either Party to enforce the terms of this Agreement, by written agreement of the Parties, to Celanese's other insurers, any representatives of the Parties including Enviro-Tox, and to reinsurers, auditors, and financial regulators. Other than as expressly provided for in this paragraph, neither Celanese nor any Celanese Insurer shall disclose the terms of this Agreement to any third-party unless so ordered by a court of law. In the event that a third-party seeks disclosure of this Agreement in any lawsuit or administrative proceeding, either of the Parties hereto will notify the other Party, and if requested by one Party, the other Party will state its opposition to such disclosure.

5. EXPIRATION OF CELANESE INSURER'S OBLIGATIONS

A. Should the limits of any Celanese Insurer's policy become exhausted, written notice shall be provided to Celanese with written documentation, as may be reasonably requested, showing such exhaustion.

B. Exhaustion of policy limits by a Celanese Insurer does not change the obligations with respect to the remaining Celanese Insurers. Indemnity payments for Photo Resist Lawsuits shall be counted toward the appropriate policy limits on the Celanese Insurer's policies. The determination that certain policy limits are exhausted will be made by the Celanese Insurer, subject to providing Celanese with supporting documentation.

6. INDEMNIFICATION

If any person or entity asserts a claim against a Celanese Insurer based upon any alleged liability of a Celanese Insurer for Defense Costs incurred by Celanese for any Photo Resist, claim or Lawsuit for which a defense is being provided by Celanese Insurers, or for claims or Lawsuits where the parties agree there is uncontroverted evidence that no obligation is owed for Defense Costs pursuant to Paragraph 2.C.1 and 2.C.2, Celanese shall indemnify that insurer and hold it harmless against any and all loss or expense incurred in connection with such claim, including reasonable legal fees, judgments or settlements. Celanese agrees to defend such actions and the Celanese Insurer shall cooperate with Celanese in defending such claims.

7. RELEASE

This Agreement is without prejudice or value as precedent, and shall not be used in any proceeding or hearing to create, prove, or interpret the obligations under, or terms and conditions of, any other agreement, or any insurance policy. It is understood and agreed that nothing herein shall be construed as a waiver, estoppel or invalidation of any position that the Parties have taken or may take in the future with respect to any coverage claims or defenses.

This Agreement further nullifies any claims of bad faith, breach of contract, breach of duty, sanctions, violations, exemplary or extra contractual damages arising from, or in connection with, claims or Lawsuits for which a defense is being provided by Celanese Insurers, or for claims or Lawsuits where the parties agree there is uncontroverted evidence that no obligation is owed for Defense Costs pursuant to Paragraph 2.C.1 and 2.C.2.

8. CONSTRUCTION OF AGREEMENT

If any of the provisions of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. In such event, the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part of the Agreement, and the remaining provisions of the Agreement shall remain in full force and effect. This Agreement is the product of arms'-length negotiations. Each of the Parties hereto has participated in the drafting of this Agreement, after consultation with counsel. Accordingly, the language herein shall not be construed either in favor of or against any of the Parties on the ground that the Party drafted the Agreement. This Agreement is an integrated Agreement and constitutes the entire understanding between and among the Parties, and replaces, cancels and supercedes any and all letters, communications, prior agreements, understandings, or undertakings of the Parties, including any prior position the Parties may have taken with respect to a particular claim.

9. GOVERNING LAW

This Agreement shall be construed in accordance with the law of the State of Delaware.

11. EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which the last Party signs the Agreement.

12. EXECUTION

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite each signature line.

CNA HOLDINGS, INC.

By:

Kathleen Foote Adamchik

Date:

May 7, 2001

CGU INSURANCE f/k/a

COMMERCIAL UNION INSURANCE COMPANIES

By: _____

Date: _____

RISK ENTERPRISE MANAGEMENT, LTD.,
AS AGENT FOR THE HOME INSURANCE COMPANY

By: _____

Date: _____

AMERICAN MOTORISTS INSURANCE COMPANY

By: _____

Date: _____

11. EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which the last Party signs the Agreement.

12. EXECUTION

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite each signature line.

CNA HOLDINGS, INC.

By: _____

Date: _____

CGU INSURANCE f/k/a
COMMERCIAL UNION INSURANCE COMPANIES

By: *[Signature]*

Date: 5/11/01

RISK ENTERPRISE MANAGEMENT, LTD.,
AS AGENT FOR THE HOME INSURANCE COMPANY

By: _____

Date: _____

AMERICAN MOTORISTS INSURANCE COMPANY

By: _____

Date: _____

11. EFFECTIVE DATE

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12. EXECUTION

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite each signature line.

CNA HOLDINGS, INC.

By: _____

Date: _____

CGU INSURANCE f/k/a
COMMERCIAL UNION INSURANCE COMPANIES

By: _____

Date: _____

RISK ENTERPRISE MANAGEMENT, LTD.,
AS AGENT FOR THE HOME INSURANCE COMPANY

By: Parvula R. Parna

Date: May 15, 2001.

AMERICAN MOTORISTS INSURANCE COMPANY

By: _____

Date: _____

11. EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which the last Party signs the Agreement.

12. EXECUTION

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite each signature line.

CNA HOLDINGS, INC.

By: _____

Date: _____

CGU INSURANCE f/k/a
COMMERCIAL UNION INSURANCE COMPANIES

By: _____


Date: _____

RISK ENTERPRISE MANAGEMENT, LTD.,
AS AGENT FOR THE HOME INSURANCE COMPANY

By: _____

Date: _____

AMERICAN MOTORISTS INSURANCE COMPANY

By: 

Date: 5-8-01

Exhibit “4”

Commercial Union Quarterly Billings, Recoveries & Outstanding Balances for Photoresist Cases

QUARTER	DATE SENT TO COMMERCIAL UNION	COMMERCIAL UNION BILLED	COMMERCIAL UNION PAID	CHECK #	DATE OF PAYMENT	COMMERCIAL UNION OUTSTANDING
Past Reimbursements						
4th Quarter 2002	2/10/2003	\$ 1,374,739.48	\$ -			\$ 1,374,739.48
1st Quarter 2003	1/0/1900	\$ 217,864.94	\$ -			\$ 217,864.94
2nd Quarter 2003	6/5/2003	\$ 85,511.34	\$ -			\$ 85,511.34
3rd Quarter 2003	9/4/2005	\$ 227,108.64	\$ -			\$ 227,108.64
4th Quarter 2003	11/12/2003	\$ 195,753.20	\$ 195,753.20	WD08688-2	6/8/2005	\$ -
1st Quarter 2004	2/3/2005	\$ 233,851.32	\$ -			\$ 233,851.32
2nd Quarter 2004	4/15/2004	\$ 140,195.37	\$ 140,195.37	WD04908-2	1/27/2005	\$ -
3rd Quarter 2004	7/13/2005	\$ 204,073.24	\$ -			\$ 204,073.24
4th Quarter 2004	10/27/2004	\$ 350,608.14	\$ -			\$ 350,608.14
1st Quarter 2005	1/20/2005	\$ 69,844.50	\$ -			\$ 69,844.50
2nd Quarter 2005	5/10/2005	\$ 31,797.06	\$ -			\$ 31,797.06
3rd Quarter 2005	7/27/2005	\$ 57,486.01	\$ -			\$ 57,486.01
4th Quarter 2005	10/3/2005	\$ 24,949.24	\$ -			\$ 24,949.24
	1/31/2006	\$ 419.50	\$ -			\$ 419.50
TOTAL DUE FROM COMMERCIAL UNION FOR PHOTORESIST CLAIMS		\$ 3,214,201.98	\$ 335,948.57			\$ 2,878,253.41

1 Paul A. Zevnik - State Bar No. 75343
 2 Michel Y. Horton - State Bar No. 114243
 3 David S. Cox - State Bar No. 181232
 4 Gerald P. Konkel - Admitted *Pro Hac Vice*
 5 MORGAN, LEWIS & BOCKIUS LLP
 6 300 South Grand Avenue, Twenty-Second Floor
 7 Los Angeles, California 90071-3132
 8 Telephone: 213.612.2500
 9 Facsimile: 213.612.2501

10 *Attorneys for Plaintiffs*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF LOS ANGELES

13 CANNON ELECTRIC, INC., now known
 14 as ITT Cannon, Inc.,

15 *Plaintiffs,*

16 vs.

17 AFFILIATED FM INSURANCE
 18 COMPANY, *et al.*

19 *Defendants.*

20 Case No. BC 290354

21 Honorable Peter D. Lichtman

22 **DECLARATION OF ROBERT B. BURNS**

23 Dept.: 322 Central Civil West

24 Complaint Filed: February 13, 2003

25 AND RELATED CROSS-COMPLAINTS.

26 Robert B. Burns, being duly sworn states as follows:

27 1. My name is Robert Burns. I am an attorney in good standing with the state bar of
 28 Pennsylvania where I am admitted to practice as well as the United States Court of Military
 Appeals. I have personal knowledge of the facts stated herein and, if called as a witness, I would
 and could competently testify as to them.

MORGAN, LEWIS &
 BOCKIUS LLP
 ATTORNEYS AT LAW

DECLARATION OF ROBERT B. BURNS



2. I am employed as General Counsel for Strube, Inc., a Department of Defense manufacturer located in Marietta, Pennsylvania. I am also a Colonel in the JAG Corps, PA ANG, and serve as General Counsel for the Adjutant General of Pennsylvania.

3. Before joining Strube, Inc. in 2007, I was employed in the insurance industry for almost thirty years. I began my career as an adjuster for Hartford Insurance Company in 1979. I left Hartford in 1980 to work at B Motor Freight in Wilmington, Delaware as a risk manager. From 1987 through 1990, I worked for Reliance Insurance Company as a liability and environmental claims examiner. In 1990, I worked at Maryland Casualty Company as claims counsel. From 1991 through 1998, I was employed by CIGNA Property & Casualty Companies in Philadelphia and was the Director of the Litigation and Coverage Group from 1993 to 1998. In 1998, I went to work for ACE USA as an Assistant Vice President in the Environmental Claims Unit which involved handling long tail product and environmental claims. In 1999, I joined Great American Insurance Company where I was employed as a Divisional Assistant Vice President in the Environmental Claims Unit and handled product and environmental claims made against insurance policies issued by Stonewall Insurance Company, Transport Indemnity Company and Great American. In November 2000, I was employed by Cavell USA Inc. as a Vice President and handled long tail liability claims made against Stonewall, Seaton, Kemper and Commercial Union policies until I left the company in 2005. I then went to work for Insurance Resolutions Inc. as an insurance consultant for one year and then returned to Stonewall as a Litigation Manager/Assistant Vice President until 2007. I received my Associate in Risk Management (ARM) designation in 2005.

4. I graduated from the University of Delaware in 1976. I obtained my Juris Doctor degree from the Delaware Law School of Widener University in 1982. I am also a graduate of the USAF Squadron Officers School, Air Command and Staff College and Air War College.

1 5. At the time I joined Great American Insurance Company in 1999, Great American
2 was in the process of selling Stonewall Insurance Company (which had been in run-off since
3 1990) to Dukes Place Holdings L.P., an investment partnership formed for the purpose of
4 acquiring insurance companies that have ceased underwriting new business. One of the Dukes
5 Place partners was Ken Randall, President of Eastgate Group Ltd. and owner of Eastgate, Inc.
6 (which later became known as Ken Randall America, Inc. and Cavell USA Inc.).

7 6. In connection with the acquisition of Stonewall, Stonewall purchased a finite
8 reinsurance contract from National Indemnity Company, a subsidiary of Berkshire Hathaway,
9 Inc. Under the finite reinsurance contract, National Indemnity agreed to reinsure Stonewall's run-
10 off liabilities up to limit of \$240 million in exchange for a premium payment of \$126 million.
11 Eastgate, Inc. (later known as Ken Randall America and then Cavell USA Inc.), was retained to
12 provide run off management services to Stonewall.

13 7. Similarly, in connection with CGNU plc's 2001 sale of CGU Insurance Co. to
14 White Mountains Insurance Group, Ltd., of which Berkshire Hathaway, Inc. had a substantial
15 ownership interest, National Indemnity Company issued a \$2.5 billion reinsurance policy to cover
16 the run-off liabilities of CGU/Commercial Union arising out of its discontinued property and
17 casualty business. Ken Randall America, Inc. was retained to manage these claims.

18 8. In November 2000, I had the title of Vice President and Senior Counsel of
19 Stonewall Insurance Company, and shortly thereafter I also became Vice President of Claims for
20 Cavell USA, Inc. I was responsible for managing the claims operations and coverage litigation of
21 Seaton Insurance Company (formerly known as Unigard Security Insurance Company),
22 Stonewall Insurance Company, and later Kemper and CGU Insurance Company. I was
23 responsible during my tenure with Cavell for supervising up to three teams (claims, consultant
24 and clerical) consisting of approximately 20 direct reports.

25 9. Although I was employed by Cavell USA, Cavell's personnel, including myself,
26 took our daily direction from National Indemnity Company since Cavell had entered into a
27 collaboration agreement with National Indemnity ceding all claims handling administration and
28

responsibility to National Indemnity. National Indemnity had control over Cavell account personnel, including control over their hiring, firing, raises, performance reviews and bonuses.

10. Beginning approximately October 2001 (shortly after the sale of CGU to White Mountains), Berkshire Hathaway, under Thomas Ryan VP, assumed control of Cavell through the collaboration agreement with National Indemnity. Thomas Ryan holds a position of Vice President for the Berkshire Hathaway Group of Insurance Companies and is also Vice President of National Indemnity Company. Mr. Ryan is responsible for the oversight and supervision of claims filed against policies under the control of the Berkshire Hathaway Group of Insurance Companies, including CGU policies. Therefore, Cavell management reports directly to Mr. Ryan and all coverage determinations and claims payments must be approved by him. Mr. Ryan is also responsible for oversight and management of claims and related coverage litigation brought by policyholders against CGU and its subsidiaries relating to the policyholders' claims for insurance coverage under primary, umbrella and excess general liability policies issued by CGU and its subsidiary companies including, The Employers' Liability Assurance Corporation, Ltd., among others.


11. As Vice President of National Indemnity with oversight and supervisory responsibilities for the CGU accounts, Mr. Ryan held weekly senior staff meetings and regular management meetings with Cavell personnel, including myself, to discuss open accounts. Our discussions would involve among other things the making or changing of coverage determinations, settlement recommendations and the timing and processing of claims payments. National Indemnity had pre-established targets for each insurance company under its control, and regardless of our determination of the companies' liability to defend or pay a claim or pay defense costs under a pre-existing coverage in place arrangement, our claims handling decisions were driven by National Indemnity's desire to meet these targets.

12. Mr. Ryan had the ultimate say regarding our handling of an account, including whether to pay a claim and the amount we paid. Mr. Ryan would also provide us with certain corporate coverage positions and strategies that we were instructed to employ in connection with

1 our handling of claims. By way of example, although it had been our custom and practice as
2 claims examiners to treat three year policies (regardless of insurer) as having separate, annual
3 general aggregate limits of liability applicable to product claims, we were instructed by Mr. Ryan
4 to treat these policies as having only one general aggregate limit of liability as a means of
5 reducing the exposure to National Indemnity and meeting targets. This edict was objected to by
6 some seasoned claims professionals, including myself, responsible for the affected accounts.
7 However, notwithstanding our protestations, Mr. Ryan prevailed and accordingly, for accounts
8 that involved multi-year policies, we changed our reserves in the claims data management system
9 for these accounts to reflect this new company policy.

10
11 I declare under the penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 16th day of October 2008 at Marietta, Pennsylvania.

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17 Robert B. Burns
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Tom - needs to discuss w/ Board
as we are missing Target

Boston Operations Financial Analysis (Second Quarter 2005)

7/19/05

Book	Transaction	2001	2002	2003	2004	Through 2nd Quarter 2004	2nd Quarter 2005	Target
CGU	Total Paid	\$162,283,697.00	\$128,324,660.00	\$302,049,304.00	\$187,911,135.00	\$93,201,349.23	\$85,439,649.00	for Total Bureau
	Direct*	\$151,359,517.00	\$116,809,988.00	\$234,274,113.00	\$163,202,036.00	\$81,694,526.39	\$81,236,684.00	
	Assumed	\$10,844,180.00	\$11,514,672.00	\$67,775,191.00	\$24,709,099.00	\$11,516,823.64	\$5,202,965.00	
	Total Recovery**	\$81,285,000.00	\$53,860,040.00	\$102,940,424.00	\$164,828,936.00	\$92,288,807.21	\$28,120,263.00	
	NICO Net	\$80,938,697.00	\$74,455,820.00	\$199,108,880.00	\$23,082,199.00	\$912,542.02	\$58,319,386.00	
Stonewall	Total Paid	\$12,894,838.00	\$11,834,505.00	\$17,640,720.00	\$17,670,508.00	\$9,889,481.52	\$15,035,531.38	\$75,000,000.00
	NICO Paid	\$12,894,838.00	\$11,708,848.00	\$17,640,720.00	\$17,670,508.00	\$8,889,481.52	\$14,844,876.00	
	SICO Paid	\$0.00	\$225,657.00	\$0.00	\$0.00	\$0.00	\$190,653.38	
	Total Recovery	\$3,849,938.00	\$4,315,382.00	\$5,526,618.00	\$9,823,036.00	\$4,118,934.00	\$498,093.00	
	NICO Recovery	\$2,820,494.00	\$3,417,565.00	\$4,719,272.00	\$6,412,619.00	\$3,592,593.00	\$411,473.00	
Seaton RA	SICO Recovery	\$1,029,446.00	\$897,817.00	\$807,346.00	\$3,410,277.00	\$526,341.00	\$87,220.00	\$7,880,000.00
	NICO Net	\$10,074,445.00	\$8,291,283.00	\$12,921,448.00	\$11,257,089.00	\$6,296,885.52	\$14,433,405.00	
	Total Paid	\$11,868,970.00	\$12,823,166.00	\$15,393,210.00	\$12,763,258.00	\$5,809,471.50	\$5,361,667.00	
	NICO Paid	\$11,393,267.00	\$12,794,320.00	\$15,393,210.00	\$12,751,979.00	\$5,808,471.50	\$5,361,667.00	
	Unigard Paid	\$275,703.00	\$28,846.00	\$0.00	\$1,279.00	\$0.00	\$0.00	
Seaton FASR	Total Recovery	\$2,015,809.00	\$4,155,540.00	\$1,836,360.00	\$2,456,961.00	\$1,274,896.87	\$487,195.00	\$11,520,000.00
	NICO Net	\$9,653,161.00	\$8,867,626.00	\$13,654,860.00	\$10,305,018.00	\$4,334,574.63	\$4,874,462.00	
	Total Paid	\$6,011,855.00	\$2,536,089.00	\$37,895,800.00	\$6,617,954.00	\$5,654,510.07	\$16,416,511.00	
	NICO Paid	\$6,011,855.00	\$2,536,089.00	\$37,895,735.00	\$6,617,954.00	\$5,654,510.07	\$16,416,511.00	
	Unigard Paid	\$0.00	\$0.00	\$145.00	\$0.00	\$0.00	\$0.00	
Kemper	Total Recovery	\$2,791,820.00	\$434,163.00	\$7,863,658.00	\$14,780,753.00	\$10,029,380.00	\$139,073.00	
	NICO Net	\$3,219,935.00	\$2,101,926.00	\$30,032,224.00	(\$0,162,799.00)	(\$4,374,868.33)	\$16,277,438.00	
	Seaton Total - NICO Net	\$12,673,096.00	\$10,769,552.00	\$43,587,084.00	\$2,142,219.00	(\$40,285.30)	\$21,151,900.00	
	Total Paid	\$0.00	\$37,825,885.00	\$79,296,166.00	\$140,128,414.00	\$77,950,351.00	\$39,630,279.00	
	Direct	\$0.00	\$37,576,635.00	\$79,213,229.00	\$140,128,414.00	\$77,950,351.00	\$39,630,279.00	
Kemper	Assumed	\$0.00	\$249,230.00	\$82,957.00	\$0.00	\$0.00	\$0.00	

*Includes Shared Allocation payments

**Figure does not include ACE and CUNA and ECRA offsets



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

CELANESE INTERNATIONAL CORPORATION,

PLAINTIFF,

v.

COMMERCIAL UNION INSURANCE COMPANY,
formerly known as COMMERCIAL UNION
INSURANCE COMPANY, ET ALS.

DEFENDANTS.

* * * * *

SUCV2006-1625-BLS2

TESTIMONY OF THOMAS RYAN

BEFORE THE HONORABLE STEPHEN NEEL

JURY TRIAL - DAY 2

Boston, Massachusetts
Room 1017
January 13, 2009

Paula Pietrella
Official Court Reporter

APPEARANCES:

For the Plaintiff:

MORGAN, LEWIS & BOCKIUS, LLP
125 High Street
14th Floor
Boston, MA 02110

By: Michael Miguel, Esq.
Jeffrey W. Moss, Esq.
Leah M. Houghton, Esq.

For the Defendants:

HERMES, NETBURN, O'CONNOR, SPEARING
265 Franklin Street
Boston, MA 02110

By: Kevin John O'Connor, Esq.
Adam Combies, Esq.

I N D E X

<i>WITNESS</i>	<i>DIRECT</i>	<i>CROSS</i>	<i>REDIRECT</i>	<i>RECROSS</i>
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THOMAS RYAN

<i>(By Mr. Miguel)</i>	<i>4</i>
<i>(By Mr. O'Connor)</i>	

EXHIBITS:

PAGE

None

P R O C E E D I N G S

(In court with jury present.)

THOMAS RYAN, Sworn

DIRECT EXAMINATION

BY MR. MIGUEL:

Q Please state your name.

A Thomas Moore Ryan.

Q And where do you live?

A Marblehead, Mass.

Q Are you currently employed?

A Yes.

Q By whom?

A I'm a vice president with National Liability
and Fire Insurance Company.

Q Do you hold any other designations or job
titles right now?

1 A Yes.

2 Q What are they?

3 A I am a vice president of National Indemnity
4 Company. I am the president of the New England
5 Division of Resolute Management, Inc. I am a vice
6 president of National Indemnity Company of Mid-
7 American, and a vice president of National Fire
8 and Marine Insurance Company.

9 Q Do you hold any titles with the Berkshire
10 Hathaway Group of Insurance Companies?

11 A The Berkshire Hathaway Group of Insurance
12 Companies is a trade name, but I'm a vice
13 president of that trade name, if you will.

14 Q And that's owned by Berkshire Hathaway; is
15 that right?

16 A It's a trade name. It's not an entity that's
17 owned or not owned, but it is part of the
18 Berkshire Hathaway, Inc.

19 Q And do you know whether the financial reports
20 of the Berkshire Hathaway Insurance Companies are
21 publicized and put in the public filings that are
22 made by the Berkshire Hathaway Company when they

1 *submit documents to the SEC?*

2 *A I'm unaware of any company called or any*
3 *company called Berkshire Hathaway Companies. Most*
4 *people know Berkshire Hathaway because of*
5 *Berkshire Hathaway, Inc.*

6 *Q Do you know whether the financials of the*
7 *Berkshire Hathaway Insurance Companies are*
8 *expressed in Berkshire Hathaway, Inc.'s annual*
9 *reports?*

10 *A I believe so.*

11 *Q Have you seen any of the annual reports of*
12 *Berkshire Hathaway, Inc.?*

13 *A I occasionally read Mr. Buffet, who is the*
14 *chairman of Berkshire Hathaway, Inc. I*
15 *occasionally, like millions of people, read his*
16 *annual letter to the shareholders.*

17 *Q And when was the last time you did that?*
18 *What year?*

19 *A I probably read 2008's.*

20 *Q Do you know whether in each of 2006, 2007,*
21 *and 2008, Mr. Buffet has specified the performance*
22 *of the Berkshire Hathaway Insurance Companies in*

1 *his letter to shareholders?*

2 *A No, not without looking at it.*

3 *Q Who handles the day-to-day work on the*
4 *accounts of the policyholder for which company for*
5 *Celanese right now?*

6 *A I'm sorry. I don't think I understood that,*
7 *Michael. One more time.*

8 *Q You said you were the president of Resolute*
9 *Management New England Division?*

10 *A Yes.*

11 *Q Is Resolute Management New England Division*
12 *the company that is currently responsible for the*
13 *day-to-day handling for claims asserted against*
14 *Commercial Union policies by Celanese?*

15 *A Yes.*

16 *Q And is there an agreement of some sort that*
17 *gives Resolute that right between Commercial Union*
18 *and Resolute?*

19 *A It's actually a series of agreements.*

20 *Q Well, Resolute's name isn't on the policy*
21 *anywhere, right?*

22 *A Correct.*

1 Q And Resolute doesn't issue insurance to
2 Celanese or anybody else, do they?

3 A Correct.

4 Q So there are agreements in place that confer
5 authority upon Resolute to handle claims for
6 Commercial Union; is that right?

7 A Yes.

8 Q And Commercial Union isn't the only company
9 that Resolute does this for, is it?

10 A No, we handle claims on behalf of several
11 companies, several insurance companies.

12 Q In fact, one of them -- you were in the
13 courtroom during the openings that were given by
14 both parties; were you not?

15 A Yes, I was.

16 Q And you saw that there was an insurance
17 company named Kemper or Amico. You saw that,
18 right?

19 A American Motorist Insurance Company called
20 Amico; and yes, we handle certain claims on
21 Amico's behalf.

22 Q In fact, Resolute handles the claims of

1 *Celanese against Amico; did it not?*

2 *A Yes. I don't exactly know when Celanese*
3 *bought back the Amico policy and whether that was*
4 *before Resolute New England Division came into*
5 *existence or not.*

6 *Q Well, you do know, don't you, that American*
7 *Motorist or Amico was a defendant in this case for*
8 *the exact same reason that Celanese was when the*
9 *case was originally brought, don't you?*

10 *A I think you meant Commercial Union, but, yes.*

11 *Q When did you start with what is now known as*
12 *Resolute Management?*

13 *A We formed a New England Division of Resolute*
14 *Management in January 1, 2007, I believe. It*
15 *might have been slightly before that.*

16 *Q What did you do before that?*

17 *A Before that, I held my other titles, that is,*
18 *vice president of National Indemnity Company, vice*
19 *president of National Indemnity Company of Bank*
20 *America, et cetera.*

21 *Q Did you hold any titles with Ken Randall*
22 *America prior to 2002?*

1 A No.

2 Q What about Cavell America?

3 A No.

4 Q Who handled the claims that were submitted
5 under the Commercial Union policies prior to
6 January 1, 2007?

7 A Well, if I may, OneBeacon has a third-party
8 administration agreement with a company called
9 National Indemnity Company, where OneBeacon
10 contracts with National Indemnity Company to
11 service the OneBeacon claims, or claims brought by
12 policyholders against certain OneBeacon policies.

13 That agreement between OneBeacon and
14 National Indemnity Company allows National
15 Indemnity Company to subdelegate the day-to-day
16 handling to other companies. And National
17 Indemnity Company subdelegated the day-to-day
18 handling to Ken Randall America, Inc. in 2001.

19 Q Is National Indemnity a reinsurer of these
20 Commercial Union policies issued to Celanese?

21 A It is one of the reinsurers of OneBeacon,
22 yes.

1 Q So the reinsurer is directing a third party
2 to handle the claims? Is that how I understand
3 what you just said?

4 A No, not exactly. These policies were sold in
5 the sixties, as Mr. Miguel pointed out in his
6 opening, from about 1965 to 1972, by a company
7 called Commercial Union.

8 Commercial Union, in turn, reinsured its
9 obligations under those policies to different
10 reinsurance companies. And in fact, in this
11 instance, slightly unusual, Celanese is a
12 reinsurer of Commercial Union under certain of
13 those policies. So if Commercial Union pays
14 Celanese ten dollars, Commercial Union then gets
15 to bill Celanese as its reinsurer, or Celanese
16 subsidiary, for a portion of that ten dollars it
17 actually spent.

18 So if it pays money to Celanese, it then
19 turns around and becomes a policyholder of
20 Celanese along with a number of other reinsurance
21 companies. All right? That's how the policies
22 were designed.

1 In 2001, March of 2001, actually right
2 before the photo resist contract was entered into
3 by Commercial Union, Commercial Union then bought
4 a reinsurance cover from National Indemnity
5 Company, so that if Celanese doesn't reimburse
6 Commercial Union for Commercial Union's payments
7 to Celanese, National Indemnity Company picks up
8 that difference.

9 Q Are you an employee of OneBeacon?

10 A No.

11 Q Have you ever been an employee of OneBeacon?

12 A No.

13 Q But it's you and your company's position that
14 by contract you have the authority to make
15 decisions and bind on coverage issues, OneBeacon,
16 under the policies issued by Celanese?

17 A OneBeacon has hired National Indemnity
18 Company to service its claims. Part and parcel of
19 that is asserting a coverage position, yes.

20 Q Mr. Ryan, you are a lawyer by training?

21 A Yes.

22 Q These prior -- you mentioned 2001. When did

1 *you start with National Indemnity?*

2 *A November 5, 2001.*

3 *Q What was your position when you first started*
4 *with National Indemnity?*

5 *A Vice president of National Indemnity.*

6 *Q What did you do?*

7 *A I oversaw the handling of OneBeacon*
8 *environmental claims, which environmental is*
9 *asbestos claims, chemical claims, claims we're*
10 *dealing with here, pollution claims. I also*
11 *oversaw the handling of claims brought on behalf*
12 *or against policies sold by a number of different*
13 *companies: Stonewall Insurance Company, Uniguard*
14 *Insurance Company, Kemper -- well, not Kemper in*
15 *'01. We didn't pick that up until the beginning*
16 *part of '02. So those three.*

17 *Q And did you know when you took over that*
18 *Celanese had asserted claims under Commercial*
19 *Union policies?*

20 *A I don't think I knew that immediately, no.*

21 *Q When did you first become aware of the fact*
22 *that Celanese had already asserted claims under*

1 *Commercial Union policies?*

2 *A Spring of 2002.*

3 *Q Now, did you supervise anybody in your*
4 *position of National Indemnity in 2001?*

5 *A Yes.*

6 *Q How many people?*

7 *A Well, I think there were probably twenty-five*
8 *people that were then employed by Commercial*
9 *Union, or, as it was then known, OneBeacon. And*
10 *then there were probably another twenty or twenty-*
11 *five with those other insurance companies that I*
12 *mentioned. Forty, forty-five.*

13 *Q Was Gene Waymon one of them?*

14 *A Yes.*

15 *Q And he was a direct report to you?*

16 *A In November 2001?*

17 *Q Yes.*

18 *A No.*

19 *Q And who did Mr. Waymon report to in 2001?*

20 *A I believe it was a gentleman named Bruce*
21 *Perkins.*

22 *Q And were there certain limitations of*

1 authority in terms of how much a person in Mr.
2 Waymon's position could authorize payment, or did
3 you have to go up the chain to get higher
4 authority for larger amounts? Do you remember?

5 A In November 2001?

6 Q Yes.

7 A There were certainly limitations. I don't
8 remember the exact dollar amounts, but I suspect
9 there were.

10 Q So, for example, if there was a check for a
11 hundred dollars, Mr. Waymon might have authority
12 to sign that, but if it went over a hundred, he
13 might have to seek the manager, something like
14 that? I'm just making up a number.

15 A Yeah, obviously you're making up the number.
16 I think that's right.

17 Q Do you remember what the numbers of authority
18 were at that time?

19 A No.

20 Q Was there a certain number over which you had
21 to authorize the payment of any checks?

22 A Not in 2001, no.

1 Q And did that change over time?

2 A Yes.

3 Q When?

4 A Somewhere in about February, March 2002, we
5 started to implement authority levels, meaning how
6 much people could pay, certain people within the
7 structure of the organization.

8 Q And if I understand you correctly, you
9 remember your first personal involvement in the
10 Celanese account being in the middle of 2002; is
11 that right?

12 A I was going to say in the spring of 2002.

13 Q Okay. How did you become aware of the
14 account in the spring of 2002?

15 A Mr. Robert Burns brought it to my attention.

16 Q And who's Mr. Burns?

17 A I'm going to retract a little bit. I was
18 part of the delegation when we took all the
19 claims, all the policyholders, Celanese and
20 Gillette and Union Carbide and, you know, list of
21 company after company. And I was the one who
22 said, okay, Mr. Burns will handle Celanese, Waymon

1 will handle Union Carbide, Mr. X will handle
2 Gillette. So to the extent I knew Celanese then,
3 when I did that division, I knew about Celanese.

4 Q And that division was some time after you
5 started in November of --

6 A Yes. It was one of the first things that I
7 did.

8 Q And do you remember in doing that who was in
9 charge of the Celanese account at the time?

10 A Mr. Waymon was in charge.

11 Q And did you, in early 2002, take that account
12 away from Mr. Waymon and assign it to Mr. Burns?

13 A Really just a division of responsibilities.
14 I thought it was a good fit for Bob.

15 Q Do you know whether at that time you knew
16 that there was an agreement that had been signed
17 three years earlier with respect to paying less
18 than a hundred percent under the policy?

19 A I know that I didn't when I assigned it.

20 Q But you came to become aware of that later,
21 right?

22 A Yes, I did.

1 Q And you knew that Celanese had been sued
2 prior to your coming to National Indemnity and
3 taking over the claims, correct?

4 A No. I didn't know that Celanese had been
5 sued prior to my current position.

6 Q No. When you were in that position, you knew
7 that there had previously been suits against
8 Celanese for which coverage claims were pending,
9 right?

10 A Sure. That's why it was open claim.

11 Q You didn't have anything to do with the
12 negotiation of the 1998 agreement, did you?

13 A No, I did not.

14 Q Do you know whether Commercial Union or Ken
15 Randall America, or whoever it was that was
16 handling the day-to-day aspects of the claim, had
17 received and paid every single payment for the
18 first three years of the term of the defense
19 agreement for the one-sixth share when you took
20 over?

21 A No, that's not my understanding.

22 Q What's your understanding?

1 A The way Celanese came to me was in March
2 2002, Kemper had hired National Indemnity Company
3 of Mid-America, which is an affiliate of National
4 Indemnity, to handle its environmental claim, and
5 they shifted the files from the Chicago area to
6 Boston. It was assigned to Mr. Burns. He came to
7 me in some time in March to June, somewhere in
8 that time frame of 2002, and said, "Look, we owe
9 them, we owe Celanese, Kemper owes Celanese,
10 OneBeacon owes Celanese money for asbestos claims
11 and chemical claims and they're overdue and
12 Celanese wants its money.

13 Q And do you understand that these were claims
14 being asserted under historic Commercial Union
15 insurance policies, right?

16 A Yes.

17 Q And part of what you do and what the group
18 that you supervise does on a regular basis is look
19 at claims and analyze policies and make a
20 determination of whether a claim is covered or
21 potentially covered for the duty to defend; is
22 that right?

1 A That's a lot of what we do.

2 Q Sir, I put a binder on your side just so that
3 we don't have to go through a big list of
4 exhibits. I'd like you to open up the first
5 document, which has been identified and admitted
6 as Exhibit 1.

7 Can you take a look at that document and
8 tell the jury whether you recognize it?

9 A It's many pages. It appears to be an
10 insurance policy sold by Commercial Union
11 Insurance Company of New York to Celanese
12 Corporation of America, effective 6/1/65 to
13 6/1/68. It's, as I say, many pages. I haven't
14 really read it, but that's what it appears to be.

15 Q Have you seen that document before today?

16 A I probably have, but I couldn't tell you
17 specifically.

18 Q Do you know that to be one of the policies
19 under which Celanese was making claim to
20 Commercial Union/OneBeacon for coverage of its
21 long tail asbestos and chemical and photo resist
22 cases?

1 A Well, when I joined, the '98 Asbestos
2 Agreement was in place, so it seemed to me they
3 were making claims under that agreement. But
4 certainly the policy was in effect then.

5 Q Well, the policy would be in effect today if
6 there was a claim that met all the conditions of
7 coverage, wouldn't it?

8 A Oh, I guess. Absolutely.

9 Q Do you see on the first page it has something
10 that was touched on a few minutes ago called
11 "Limits of Liability." Do you see that, sir?

12 A I do.

13 Q Can you tell the jury your understanding of
14 the nature of the claims that are being asserted
15 against Celanese?

16 A Well, there are many different types of
17 claims that are being asserted against Celanese.
18 First and foremost, Celanese had asbestos, which
19 is a known carcinogen, in its claims, mostly in
20 Texas. And that people that Celanese invited on
21 to their property were exposed to asbestos fibers
22 and either allegedly or in actuality developed

1 illnesses, which is cancer from exposure to that
2 asbestos.

3 Celanese is a chemical-producing
4 company. That's what it does. And so it made
5 various chemicals that caused cancer. And so
6 Celanese's claim -- people are claiming that they
7 have developed cancer because of Celanese's
8 product. Celanese has a particular type of
9 chemical that cause birth defects, unfortunately,
10 and people are claiming that Celanese caused birth
11 defects in their children, as well as cancers and
12 all other kinds of things. Those would be what
13 I'll call photo resist claims. Those are the ones
14 that are at issue in this lawsuit. There have
15 been, as you know, numerous other claims asserted
16 by Celanese.

17 Q And those claims, you're talking about what
18 the allegations were. You're not aware of anybody
19 ever proving that the Celanese product caused
20 birth defects, are you?

21 A Well, I know that Celanese has paid millions
22 of dollars in settlements of those claims. It's

1 *something that I heard in your opening that I was*
2 *surprised that you said, because Celanese has*
3 *paid, has settled these claims and has paid*
4 *millions upon millions of dollars to these injured*
5 *people.*

6 *Q Upon what do you base that?*

7 *A The information you sent me, that they have*
8 *in fact paid indemnity dollars. That was*
9 *obviously, as you know, Michael, one of our big*
10 *disputes. But you sent me information shortly*
11 *after we first met.*

12 *Q Now, one of the types of claims that you just*
13 *mentioned, the first one I think you said it was*
14 *claimants that were invited on to property and*
15 *claimed that they had alleged exposure. Remember*
16 *saying that?*

17 *A Yes.*

18 *Q Could those claims or should those claims*
19 *properly be characterized as premises claims?*

20 *A I do.*

21 *Q And a premises claim, like you said, is one*
22 *where it involves a third party alleging exposure*

1 injury from coming to the premises the insured,
2 right?

3 A Generally speaking, I'll agree with that,
4 yes.

5 Q Are there aggregate limits of any kind to
6 this policy before you with respect to the
7 premises claims?

8 A Well, there are aggregate limit. And just so
9 everything understands, an aggregate is, in
10 insurance parlance, when you take multiple things
11 and combine them. You aggregate them, okay?

12 So there are aggregate limits in this
13 policy that apply to the, I think it's the Product
14 Hazard Completed Operations, but I haven't studied
15 it, Michael.

16 Q Has Resolute or Commercial Union up to this
17 point ever taken the position that aggregate
18 limits in any of the Commercial Union policies
19 apply to premises claims?

20 A No.

21 Q So when you hear about -- there's an
22 aggregate limit that doesn't apply to premises

1 *claims, right?*

2 *A I believe that's correct, yes, Michael.*

3 *Q Now, have you in your short time looking at*
4 *this in your experience with the form -- this is a*
5 *form, by the way, right, that you're looking at?*

6 *A It appears to be partially a form. I did*
7 *notice there are a number of endorsements to a*
8 *policy. And the way things tend to work is*
9 *there's a form, and then a company sophisticated*
10 *like Celanese has particular insurance needs so*
11 *they'll do various endorsements, which tend to be*
12 *handwritten and negotiated between the parties.*

13 *Q This isn't the first time you've been asked*
14 *to look at a Commercial Union form from the mid-*
15 *1960s, is it?*

16 *A No.*

17 *Q You have some familiarity with the form*
18 *itself?*

19 *A Unfortunately, Michael, there are many forms,*
20 *depending on the risk. But I've seen a lot of*
21 *them. Have I studied all of them? I don't think*
22 *I'm that good.*

1 Q Well, Mr. Ryan, do you know whether this is a
2 primary insurance policy?

3 A I don't mean to quibble, but are you missing
4 the first page of the second page of what I think
5 would be the form?

6 Q It's entirely possible.

7 MR. MIGUEL: Your Honor, may I?

8 Q I'm just going to hand you one that's not in
9 your binder, but it does have the pages. If you
10 look at the third page, would you tell the jury
11 whether this policy has a supplemental duty to
12 defend language in it?

13 A It has a provision called "Defense Settlement
14 Supplementary Payments," yes.

15 Q And the amounts that are paid in defending a
16 case do not erode the limits of liability under a
17 policy such as this unless otherwise provided, do
18 they?

19 A Usually not.

20 Q So it is not atypical in your practice that a
21 policy that's as old as this will have modest
22 limits of liability, like a hundred thousand

1 *dollars, but defense costs could exceed that*
2 *greatly, couldn't they?*

3 *A I don't know about the norm, but it certainly*
4 *happens, yes.*

5 *Q In your experience, that's happened before,*
6 *hasn't it?*

7 *A Absolutely.*

8 *Q More than once.*

9 *A You bet.*

10 *Q Now, as you read this policy before you and*
11 *based on your experience in running this claims*
12 *management company, is there any limitation on the*
13 *amount that would be paid in defense costs if all*
14 *the other conditions of the policy are otherwise*
15 *met? Meaning that the claim has been asserted*
16 *that alleges coverage even if the claim is*
17 *groundless, false or fraudulent?*

18 *A Certainly it says we defend. And here again,*
19 *I hadn't studied it. But Michael's right. This*
20 *is not unusual. The policy would respond whether*
21 *the claim was fraudulent or whatnot. And there is*
22 *no cap on the amount of defense cost this policy*

1 *could be obligated to pay.*

2 *Q Is there anything in that document that*
3 *states that the insurer is entitled to pay less*
4 *than a hundred percent of any claim that otherwise*
5 *meets the definition of the supplementary defense*
6 *obligation?*

7 *A As you know, Michael, that question has been*
8 *answered by numerous courts across the country and*
9 *with differing results. So my answer is, yes, it*
10 *does require that the occurrence, which is the*
11 *event that starts the whole ball rolling, you have*
12 *to have an occurrence, is -- and the definition of*
13 *occurrence is during the policy period.*

14 *So if you have an exposure in policy*
15 *one, policy year one, and you have an exposure in*
16 *policy year two, the occurrence transcended both*
17 *policies, are both years obligated to defend?*
18 *Many courts say yes. In fact, that exact argument*
19 *was argued before the Supreme Judicial Court last*
20 *week, here in Massachusetts.*

21 *Q My question, sir, is whether the policy*
22 *before you enables the insurance company to limit*

1 its defense obligation if there are other insurers
2 with co-existent obligations?

3 A Well, here again, the policy does have
4 another insurance provision which states, and I'll
5 quote it, other insurance.

6 (Reading): "If the insured, Celanese,
7 has other valid and collectable insurance inuring
8 to the benefit of the insured against a loss
9 covered by this policy, the insurance afforded by
10 this policy shall be in excess of such other valid
11 and collectible insurance."

12 Courts have interpreted this language to
13 say that in situations where the occurrence
14 transcends multiple years, that the insurance
15 policies are only responsible for a portion of
16 that. I can say quite honestly that that is not
17 the law in the Commonwealth of Massachusetts
18 today.

19 Q Do you know whether there's other valid and
20 collectible insurance available to Celanese right
21 now for the losses that are being asked to be paid
22 under the Commercial Union policy?

1 A I don't know. I certainly know that there
2 was.

3 Q Well, you have subrogation rights under this
4 policy, right?

5 A Is that another provision you want me to look
6 at?

7 Q Do you know whether the form allows you, once
8 you've paid, to go after other people that you
9 think might be responsible for what you had to pay
10 up?

11 A It had a subrogation provision, yes.

12 Q And has Resolute or OneBeacon gone after any
13 other insurance company or third party for any of
14 the amounts that is paid to date to Celanese?

15 A No. Under the 1998 Agreement, we promised
16 Celanese we wouldn't do that and we've honored
17 that promise.

18 Q Let's talk about that agreement for a minute.
19 Your position today is that that agreement is
20 still in effect, correct?

21 A It is my position today that Commercial Union
22 believes it's still in effect and that Celanese

1 *still believes it's still in effect.*

2 *Q Have you through the course of this*
3 *litigation seen any of the documents that have*
4 *been signed under oath and presented to the court*
5 *on behalf of Resolute Management?*

6 *A I've seen some things. Not all things. I*
7 *saw your blowup.*

8 *Q Would it surprise you, sir, to know that*
9 *Commercial Union, or OneBeacon's and Resolute's*
10 *corporate designee testified under oath that that*
11 *agreement had terminated in 2001?*

12 *A It would surprise me. I would think that*
13 *that's a misunderstanding if that's what he said.*
14 *Or maybe it's just wrong. We had operated under*
15 *this agreement until very recently, the end of*
16 *'08. We have paid under this agreement and we*
17 *have not filed subrogation against other carriers*
18 *because the agreement prohibits us from doing it.*

19 *Q Would it surprise you that on no list that*
20 *four occasions, verified discovery responses were*
21 *signed under oath stating that the coverage in*
22 *place agreement terminated in 2001?*

1 A It would surprise me if that is the
2 termination. It wouldn't surprise me if, in fact,
3 we were talking about the initial term has
4 expired, because under the agreement wording, the
5 initial term has expired.

6 But the reason the party used the word
7 "initial" to talk about the term was because there
8 was going to be a subsequent term. The initial
9 term has expired. I think it was three years, but
10 I don't, unless you tell me it's in here, I don't
11 have it.

12 Q Have you seen any written extension of that
13 agreement?

14 A Sure. Every time Celanese submits a new
15 Exhibit C to us, that's a written document that
16 you give to us indicating that, "Look, we want
17 these claims covered that are on this Exhibit C.
18 We want you to pay for them."

19 Q Does Exhibit C say the term shall extend past
20 March 2001?

21 A No. I think the agreement says that the term
22 will extend if Exhibit C's are submitted. And as

1 *you know, Michael, Exhibit C's have been submitted*
2 *I think as recently as the fall of 2008.*

3 *Q And have any of those Exhibit C's after the*
4 *year 1999 been signed by Celanese?*

5 *A I don't believe so, but I don't know for*
6 *sure.*

7 *Q Do you know if any of those Exhibit C's after*
8 *1999 have been signed by Resolute, Ken Randall*
9 *America, Cavell or OneBeacon?*

10 *A I'm almost positive they have.*

11 *Q If you could turn in your binder to the next*
12 *document, Exhibit 5, which is the Defense Cost*
13 *Sharing Agreement that we just started talking*
14 *about?*

15 *A Yes.*

16 *Q Do you know who prepared that document?*

17 *A Who actually typed it?*

18 *Q Yeah, who typed it.*

19 *A I don't know.*

20 *Q Do you know who Howard Tolan is?*

21 *A I believe Mr. Tolan at least was a lawyer in*
22 *Chicago.*

1 Q Do you know if he was with the firm Rivken
2 Radler?

3 A I do know that, and I don't know why, but I
4 do know that.

5 Q Do you know whether Mr. Tolan at Mr. Waymon's
6 request prepared the first draft of this document?

7 A I don't know.

8 Q You weren't any part of that; you weren't
9 part of the company at that point, right?

10 A The document quite clearly states that this
11 constitutes the entire understanding between the
12 parties and replaces, cancels and supercedes any
13 and all letters, communications, prior agreements,
14 understandings, or undertakings of the parties,
15 including any prior position of the parties the
16 parties may have asserted with respect to a
17 particular claim.

18 So I know that this is called -- that's
19 an integration clause. It's an integrated
20 document. This is it. So I really didn't get
21 into who typed the first draft, who typed the
22 second draft. Inconsequential to me.

1 Q You didn't care, but when you got there it
2 was in place, right?

3 A Exactly.

4 Q And was it your understanding that before
5 that was entered into, that someone handling the
6 claim for Commercial Union had made the
7 determination the Celanese's bodily injury suits
8 raised the possibility of coverage under the
9 Commercial Union's policies?

10 MR. O'CONNOR: Objection.

11 THE COURT: Sustained.

12 (By Mr. Miguel)

13 Q Do you know whether a determination had been
14 made at the time you got there as to whether the
15 Commercial Union policies responded with a duty to
16 defend the lawsuits that were being brought
17 against Celanese?

18 A Well, here again, the agreement says that
19 Celanese alleges that.

20 Q I'm not asking about the agreement. I'm
21 asking you did you know, when you took over the
22 handling or at least supervising the people

1 handling this case, whether a determination had
2 been made as to whether a potential for coverage
3 under the Commercial Union policies existed for
4 the asbestos claims?

5 A I presumed it.

6 Q You presumed that it did.

7 A I presumed someone had thought that it did.
8 That's why the parties entered into this
9 agreement.

10 Q If you didn't, it would be defending them,
11 right?

12 MR. O'CONNOR: Objection.

13 A I don't know.

14 THE COURT: Sustained.

15 (By Mr. Miguel)

16 Q So under the COMMERCIAL UNION policies,
17 checks were going to Celanese, at least
18 sporadically, to pay for their defense costs under
19 this agreement. Is that fair?

20 A When I got there, it was the initial concern,
21 after the slicing, was that checks weren't going.
22 That's what we've got to fix.

1 Q But you know that the checks had gone in the
2 past?

3 A I didn't know that then. It was much, much
4 later that we did a forensic accounting, if you
5 will, to find out what's been paid and not been
6 paid and what was it paid for, because that's very
7 important as to the limits.

8 Q And you know, sir, don't you, that under this
9 agreement the amounts that were to be paid by
10 OneBeacon was only one-sixth of the total, right?

11 A Yes.

12 Q And do you also know that Celanese was
13 agreeing to take a one-sixth share along with each
14 of its other insurers?

15 A Yes, that's my understanding.

16 Q Was that out of the ordinary?

17 A No. I wouldn't say it's out of the ordinary,
18 but it was certainly the parties got things that
19 they wanted out of this agreement. I mean, first
20 and foremost, Celanese got control of the defense.
21 They got to hire the counsel, the lawyers that
22 they liked. And they got to tell those lawyers

1 *how to do something. That's really -- that, I*
2 *think, is really what Celanese wanted out of the*
3 *deal.*

4 *Because, as you mentioned in your*
5 *opening, an insurance policy is a two-way street.*
6 *And one of the two ways is that if I'm an*
7 *insurance company defending -- for example, you*
8 *get in a car accident, you then tender to your*
9 *insurance company, the insurance company appoints*
10 *the lawyer and says so and so will represent you.*
11 *All right? Celanese didn't want that. Celanese*
12 *wanted its lawyers to defend them.*

13 *And that's one of the benefits they got*
14 *out of the agreement. Obviously, one of the*
15 *benefits that OneBeacon got out of the agreement*
16 *is it was paying one-sixth.*

17 *Q Instead of a hundred percent, right?*

18 *A Well, certainly in 1998, the hundred percent,*
19 *like I said, the different states hold different*
20 *things. I mean, these policies were sold in New*
21 *York.*

22 *If New York were governing, all right,*

1 New York says each carrier picks up an equal
2 share. So Commercial Union would pay one-fifth,
3 Kemper would pay one-fifth, National Union would
4 pay one-fifth. I'm missing one. Northwest
5 National would pay one-fifth. So we're actually
6 paying a little bit more. But there are other
7 states, including the Commonwealth, which says we
8 pay a hundred percent. So it was a negotiated
9 resolution. It says so right in the agreement.

10 Q It was a good deal for Commercial Union, but
11 you got some things that you usually get to do you
12 didn't get to do because of the agreement in terms
13 of oversight and control of counsel, correct?

14 A We didn't get to control what we normally
15 would have controlled, correct.

16 Q And so part of the consideration on the other
17 side was that you were giving up some of this
18 control for the right to pay a sixth instead of a
19 much larger share, right?

20 A Possibly a much larger share, and obviously
21 that's what Commercial Union thought this was a
22 reasonable thing to do and so did Celanese, and so

1 they did it.

2 Q Sir, in paragraph 3 of that document -- let
3 me ask you a question. Are you familiar with this
4 document? Have you looked at it before today?

5 A Sure.

6 Q And when was the last time you went through
7 it?

8 A The last time?

9 Q Yes.

10 A Last night.

11 Q Would you look at paragraph 3?

12 A Sure.

13 THE COURT: Could I see counsel briefly?

14 SIDEBAR CONFERENCE:

15 THE COURT: Do the jurors have this
16 document? Do they have a binder?

17 MR. MIGUEL: I'm going to give them
18 binders tomorrow morning.

19 THE COURT: It's just a timing issue?

20 MR. MIGUEL: Yes.

21 THE COURT: Okay.

22 MR. MIGUEL: We're going to do what we

1 can to make sure that they have them.

2 MR. O'CONNOR: We'll talk this afternoon
3 about it.

4 THE COURT: Okay. Fine. I'll tell
5 them.

6 END OF SIDEBAR CONFERENCE.

7 THE COURT: Ladies and gentlemen, I
8 wanted to confirm you will be, as I think was
9 mentioned, receiving a binder with documents that
10 are being discussed. We're going more quickly
11 than we had anticipated. Those are not ready for
12 you, but you'll have those probably first thing in
13 the morning.

14 Go ahead, Mr. Miguel.

15 MR. MIGUEL: Thank you, your Honor.

16 (By Mr. Miguel)

17 Q Do you see paragraph 3 talks about adding
18 claims by Exhibit C, correct?

19 A That's a good paraphrase.

20 Q And do you see where it says, "Exhibit C.
21 Claims may be added by having the parties
22 countersign the bottom fo Exhibit C." Do you see

1 that?

2 A It says, "The parties agree that new" --
3 which is in quotation marks for some reason, I
4 don't know why -- "or pending claims, which have
5 been recently noticed, may become subject to this
6 agreement by addendum, which will become Exhibit
7 C.

8 "Upon neutral consent of the parties,
9 additional claims may be added to Exhibit C by
10 having the parties countersign the bottom of
11 Exhibit C each time a new claim is agreed to be
12 governed by the terms of this agreement."

13 Q And again, are you aware of any document
14 entitled "Exhibit C" that is countersigned at the
15 bottom by both parties existing after 1999?

16 A I'm not.

17 Q Could you turn the page and look at paragraph
18 7 for a minute, please.

19 A Yes.

20 Q The first sentence says, "The initial term of
21 this agreement would be for a period of three
22 years beginning on the effective date of the

1 *agreement."*

2 *Do you see that?*

3 A *I do.*

4 Q *That's what you were referring to earlier*
5 *when you said the word "initial" was in there?*

6 A *The initial term, yes, the phrase.*

7 Q *If you would turn the page and look at the*
8 *last sentence of paragraph 8.*

9 A *I'm sorry. Paragraph 7 or paragraph --*

10 Q *Paragraph 7, right before paragraph 8.*

11 A *Okay.*

12 Q *It says, "This agreement may be amended,*
13 *supplemented or nullified only by a writing signed*
14 *on behalf of one of the representatives identified*
15 *above."*

16 *Did I read that right?*

17 A *No. Signed by or on behalf, but I got the*
18 *gist of it.*

19 Q *Do you know of any document signed by either*
20 *or both parties amending, supplementing, or*
21 *nullifying any part of this document?*

22 A *No.*

1 Q Take a look at paragraph 9 on the next page.
2 Isn't it true that the parties reserved their
3 rights under the policies with respect to the
4 claims under the policies as identified in this
5 paragraph?

6 MR. O'CONNOR: Objection, your Honor.

7 THE COURT: What's your objection in a
8 word or two, if you can.

9 MR. O'CONNOR: Your Honor has already
10 ruled on this issue of what this means.

11 THE COURT: Let's discuss this, please.

12 SIDEBAR CONFERENCE:

13 MR. O'CONNOR: I guess that means
14 relevance, your Honor.

15 THE COURT: Can you repeat the question
16 that's pending? The parties have preserved their
17 rights as to --

18 MR. MIGUEL: The paragraph discusses the
19 fact that the parties have reserved their rights
20 under the policy. I'm merely asking it to set up
21 a question about whether he understood that the
22 agreement did not affect, otherwise affect, the

1 rights and obligations of the parties --

2 THE COURT: I think my ruling -- you
3 obviously have my ruling in mind. And if you ask
4 any question that appears to me to assume or
5 convey to the jury that the contract is to be
6 interpreted other than I have interpreted it, I
7 will sustain an objection to that question. I
8 don't think that's an objectionable question.

9 END OF SIDEBAR CONFERENCE.

10 A Could I ask you to repeat the question? I'm
11 sorry.

12 Q You can ask. I don't if I will be able to,
13 but I'll do my best.

14 Did you understand in reading paragraph
15 9 that the parties were reserving their rights
16 under the policies?

17 A I'm not sure it uses that phrase. It says
18 that it is understood and agreed that nothing
19 herein shall be construed as a waiver, estoppel or
20 invalidation of any position that the parties have
21 taken or may take in the future with respect to
22 any coverage claims or defenses.

1 It goes on to talk about how Commercial
2 Union denies an obligation to indemnify. It then
3 goes on to say that this agreement is a compromise
4 with respect to Celanese defense costs for claims
5 identified in B and C, and has no effect on
6 indemnity.

7 Q Mr. Ryan, I should have been more clear. If
8 you could look at the last sentence that begins
9 three lines above the end of the paragraph that
10 starts with, "Commercial Union expressly ..."

11 A Yep, you're right. The last sentence says,
12 "Commercial Union expressly reserves its right
13 under the alleged insurance policies and may
14 assert any coverage defenses with respect to both
15 defense and indemnity for past, present, and
16 future claims tendered by HCC Celanese to
17 Commercial Union."

18 THE COURT: I think it's probably clear,
19 but just to be sure everyone has the same
20 understanding. The word "indemnity" has been
21 used. Could you define as contrasted with defense
22 duty to defend. Could you define simply what

1 *"indemnity" refers to?*

2 *A Yes, I can. Actually, I thought Michael did*
3 *a very nice job in his opening about it.*

4 *An insurance policy like this one has*
5 *two obligations. One is to defend the insured.*
6 *So you get in a car accident. The person that hit*
7 *you, sues you. You defend them. All right? The*
8 *matter goes to a court very similar here, that*
9 *person prevails and wins ten dollars. All right?*
10 *That insurance policy then must indemnify, pay*
11 *that judgment.*

12 *So indemnity is money that you pay to*
13 *settle a claim. Defense is money that you pay to*
14 *defend the claim. Okay?*

15 *Q In paragraph 10, the next paragraph, is one*
16 *we talked about when the agreement was in front of*
17 *you. But it's your understanding that under this*
18 *agreement, Celanese did have the right to*
19 *supervise and control the defense of the cases,*
20 *including the handling of the outside counsel; is*
21 *that right?*

22 *A Certainly within the other limits of the*

1 *terms of the contract, of this agreement. But,*
2 *yes, I would say that's a fair characterization.*

3 *Q And since the insurance companies who might*
4 *typically undertake that function didn't have*
5 *rights, do you know whether there were meetings*
6 *that were held with the insurers and Celanese to*
7 *talk about the progress of the case?*

8 *A I know that in the early going there were*
9 *meetings with the carriers and with Mr. Burns*
10 *under my watch, and then the use of conference*
11 *calls, I think really supplanted the meetings.*
12 *And there were many, many conference calls. I*
13 *participated in a couple.*

14 *I do know that there were a limited,*
15 *very limited, number of conference calls where the*
16 *actual defense counsel was on the phone. And one*
17 *of our issues was we wanted to speak to the*
18 *defense counsel and Celanese felt that was*
19 *interfering with their right to control.*

20 *Q You know that this agreement provided for*
21 *annual meetings, don't you?*

22 *A I do know that, yes.*

1 Q And for each of the years 1999 through 2001,
2 there were annual meetings that Commercial Union
3 partook, right?

4 A I believe through 2002, Michael. Mr. Burns
5 went to one in the spring of 2002.

6 Q And defense counsel were at those meetings
7 and were made available to ask any question,
8 correct?

9 A That's correct.

10 Q And those annual meetings were supplemented
11 by periodic telephone calls that had to do with
12 the size of the cases, right?

13 A Yes. I would suggest Christine Brook would
14 be better to answer that, but, yes.

15 Q But you did participate in some of them,
16 didn't you?

17 A I participated in conference calls. I don't
18 recall -- yes. Someone from the Kasowitz firm was
19 on the phone when we talked about it. At least
20 one there was one with the defense counsel on the
21 phone.

22 Q Can you turn to paragraph 10. Specifically

1 I'd like you to look at the bottom of page 6, with
2 the sentence that starts "However."

3 A I see that.

4 Q Did you understand that Celanese, or its
5 representative, would be reviewing the legal
6 invoices and approving the amount that represented
7 necessary and reasonable defense costs?

8 A It certainly was my understanding that
9 Celanese had hired an outside claim adjuster firm
10 to manage the claims and the invoices that they
11 were supposed to be reviewing.

12 Q And what's the name of that company?

13 A Enviro-Tox Loss Services. I call it Environ-
14 Tox.

15 Q Lots of people call it Environ-Tox. I think
16 they call it Environ-Tox.

17 A Okay.

18 Q You don't think much of Environ-Tox, do you?

19 A As you know from our conversations, Michael,
20 you and I don't think much of Environ-Tox.

21 Q So you don't like the fact that they were
22 working with Celanese on this particular matter,

1 do you?

2 A No, that's not my problem with them. I felt
3 that they weren't doing the job that they should
4 be doing, and I felt that they were an impediment
5 to Celanese fulfilling its obligations under this
6 1998 Agreement.

7 Q Can you identify anything that they did that
8 you think was inadequate?

9 A Sure. If you turn the page to provision
10 number eleven, it says, "On a quarterly basis,
11 HCC, Celanese, will submit all legal invoices to
12 Commercial Union for those claims listed on
13 Exhibits B and C." They didn't do that.

14 Q They didn't do what?

15 A They didn't do that. They did not submit on
16 a quarterly basis all the legal invoices to
17 Commercial Union.

18 Q You got invoices. You just didn't get the
19 underlying lawyer invoices.

20 A I think it's important for the jury to
21 understand when you use the word "invoice," I use
22 the word "spreadsheet."

1 Q Okay.

2 A When I use the word "invoice" and when the
3 document uses the word "invoice," it's an invoice.

4 Anyone who's gotten a phone bill knows
5 what an invoice is. It is a "here's what I did,
6 here are the calls that I made, here's the time
7 that it took, here's the amount." We didn't get
8 that.

9 Q So you're saying you got a spreadsheet with
10 numbers and an amount that you have to pay, but
11 you didn't get the bills from the lawyers doing
12 the work. Is that what you're saying?

13 A That is one of the impediments that Enviro-
14 Tox through up, yes.

15 Q And when did this impediment come to your
16 attention?

17 A 2003.

18 Q Okay. In 2003, you first learned that you
19 were not receiving the actual defense cost bills?

20 A For the asbestos.

21 Q Okay.

22 A Yeah. I mean, the fact of the matter is when

1 *Mr. Burns handled this in 2002, he came to me and*
2 *said, "Look, we have an agreement. We have to*
3 *pay. We have no rights. We have to pay."*

4 *And it wasn't until several months*
5 *later, regretful, but several months later that I*
6 *looked at the actual agreement. And Mr. Burns'*
7 *statement that we don't have any rights, we just*
8 *have to pay, is in fact wrong.*

9 *Q So again, you weren't there in 1998 and you*
10 *can't speak to what happened between 1998 and*
11 *2001, right?*

12 *A True.*

13 *Q So you don't know for a fact, do you, whether*
14 *Gene Waymon on behalf of Commercial Union*
15 *instructed Enviro-Tox not to send the underlying*
16 *invoices. Can you speak to that?*

17 *A I don't know one way or another. And it's*
18 *irrelevant to me. I know under my watch we asked.*

19 *Q In 2003?*

20 *A We started the end of 2002, beginning part of*
21 *2003. That's one of the things.*

22 *Q Also in paragraph 11, the last sentence, or*

1 *second to last sentence, "Commercial Union will*
2 *have 30 days to pay uncontested charges and raise*
3 *inquiries about a disputed charge with*
4 *particularity." Do you see that, sir?*

5 *A I think you misquoted again, Michael, and you*
6 *did it in your opening, and I think it's a gross*
7 *injustice to this jury.*

8 *Q Does it not say, "Commercial Union will then,*
9 *within 30 days, pay all uncontested charges and*
10 *raise inquiries about a disputed charge with*
11 *particularity"?*

12 *A It does. And I wish your demonstrative in*
13 *your opening quoted it correctly. Because for*
14 *some reason, in your demonstrative to this jury,*
15 *you excised the word "then" out from this. You*
16 *put Commercial Union will, dot, dot, dot, within*
17 *30 days. Why?*

18 *Well, the word "then" shows a*
19 *sequencing. Celanese will do X, and then -- and*
20 *then -- Commercial Union will do Y. Then, will*
21 *then, is what it says.*

22 *Q Has Commercial Union objected in writing*

1 within 30 days, or any of its representatives, to
2 any invoice or any spreadsheet sent to it by
3 Celanese since you've been part of this process?

4 A We have objected on a whole host of bases for
5 different things. And it's important to
6 understand that we got a spreadsheet, all right?
7 We didn't get the invoices.

8 So this paragraph presumes on a
9 quarterly basis we will get the invoices and
10 therefore we could object to particularity to that
11 invoice: "Hey, I didn't make that call Guam.
12 Cross that off my phone bill." All right? We
13 didn't get the invoices, so we again couldn't
14 object to particularity.

15 What we did do is we said: Look, it
16 appears that the agreement has gotten a little
17 loose. We want to get these invoices.

18 Because the agreement is really three
19 things. We have a duty to pay one-sixth of
20 defense costs that trigger our policies, meaning
21 that the exposures during our year, '65 to '72, up
22 to our limit of liability. So if neither the

1 claimant -- say the claimant was exposed to
2 asbestos in 1980, the agreement, we don't have
3 that responsibility under the policies or under
4 the '98 Agreement.

5 Or say that we paid our limit under the
6 policy, which is \$300,000, which is a lot of
7 money, but in the terms of dollars that Michael
8 was talking about earlier, you can see not a lot.
9 If we had exhausted our limit, then we don't have
10 to pay anymore.

11 So the things that we needed, all right,
12 is we needed to know whether the claimant
13 triggers. Was he exposed? Was he invited on the
14 Celanese premises between 1965 and 1972. And did
15 we exhaust our limit. All right.

16 We were originally very concerned about
17 the limit part because Celanese was saying then,
18 as Michael said in his opening, that they hadn't
19 paid any indemnity, when it's wrong. It's a flat-
20 out lie. They have paid indemnity. They have
21 settled these claims. And if those claims -- if
22 that indemnity exceeded our limit, we wouldn't be

1 *responsible.*

2 *So you'll hear and you'll see, and I was*
3 *concerned about it, how that was really what the*
4 *concern was. So you have to have that before then*
5 *we have to pay.*

6 *Q Thank you for that closing argument, but I'd*
7 *like you to answer the question. Can you show us*
8 *any written objection within 30 days of the tender*
9 *of any invoice or spreadsheet?*

10 *MR. O'CONNOR: Objection, your Honor.*
11 *Relevance.*

12 *THE COURT: Overruled.*

13 *A We obviously sent you our audit report.*

14 *Q When was that?*

15 *A The audit on photo resist was September of*
16 *'05. I think we sent it to you in October of '05.*
17 *We ordered asbestos in December of '06. I think*
18 *we sent it to you -- no, December of '05. I think*
19 *we sent it to you in '06. You and I certainly*
20 *talked about it. So to the extent that's within*
21 *that phrase, that's what we did.*

22 *Q So your objections were asking for the actual*

1 *defense costs in 2003 and sending us audits,*
2 *according to you, in 2005 and 2006; is that right?*

3 *A I think you're beginning to pick up the*
4 *problem that Mr. O'Connor talked about, yes.*

5 *Q Are you sure that we got the photo resist*
6 *audit in 2005?*

7 *A I thought you did.*

8 *Q Would it surprise --*

9 *A The Photo Resist Agreement or the audit*
10 *reports?*

11 *Q No, audit reports. Would it surprise you*
12 *that it was promised in the fall of 2005 and we*
13 *didn't get it until after the lawsuit started?*

14 *A That would surprise me, but if it did, my*
15 *apologies.*

16 *Q So you're not aware of any objection between*
17 *1998 and 2003?*

18 *A Oh, no, not at all. I'm aware of tons of*
19 *objections.*

20 *Q Do you have any writing?*

21 *A You're asking me in writing?*

22 *Q Yes.*

1 A No, we handled this through a series of
2 conference calls.

3 Q Sir, do you see paragraph 12, the next
4 paragraph in the document, refers to something
5 that Mr. O'Connor mentioned earlier was your
6 request and right to seek an independent legal
7 audit?

8 A Well, it says, "We retain the right to
9 request reasonable backup documentation and
10 specific items in order to verify that work billed
11 has been performed as described."

12 It then goes on to say that, "An
13 independent legal auditor selected mutually by
14 Commercial Union and Celanese, and Celanese's
15 other insurers may be retained."

16 Q So it's not mandatory, right? It's optional.

17 A It certainly says "may."

18 Q Now, you mentioned an audit in 2005 and an
19 audit in 2006. Who did those audits?

20 A They were a combination. We hired a
21 professional auditing company to do the legal fee
22 audit, which is looking through the bill. And we

1 hired the same professional company to do what
2 I'll call the claim audit, which is that exposure
3 that I was talking about, whether the claimant was
4 at a Celanese facility during the time period.
5 And we staffed that with the professional
6 auditors, which is the company of Alan H. Gray &
7 Company located here on Broad Street, and then
8 people with, I think the company was called Cavell
9 at that time.

10 Q Was that a mutually agreed-upon retention of
11 Alan Gray?

12 A No, no.

13 Q So this isn't an audit that was agreed upon
14 by Celanese underneath this agreement, was it?

15 A No, in fact quite the contrary. Celanese I
16 think was somewhere between upset and perturbed
17 that we would be doing such an audit.

18 Q They complied with the audit request, didn't
19 they?

20 A Ultimately, yes.

21 Q Both of them, right?

22 A Ultimately, yes.

1 Q In fact, you did three audits, didn't you?

2 A Meaning we went down to Texas three separate
3 times?

4 Q Yes.

5 A That wouldn't surprise me.

6 Q Sir, could you turn briefly to the next
7 document in your binder, which is Exhibit 7, a
8 Photo Resist Agreement.

9 A Yes.

10 Q Are you familiar with this document as well,
11 sir?

12 A Yes.

13 Q And this one came later in time than the
14 Asbestos Agreement we were looking at earlier,
15 right?

16 A Yes. This was signed in March of '01, I
17 believe.

18 Q And hereto, Celanese was entitled to control
19 the defense of the underlying cases; is that
20 right?

21 A That's my -- yes. Do you want me to find the
22 specific paragraph?

1 Q No. You can tell me what you generally
2 understand. If you need to look at it to --

3 A No, Michael, that's my general understanding.

4 Q And again, the compromise was that in for
5 controlling the defense under the sea of policies
6 only a portion of the defense was going to be
7 paid, right?

8 A It certainly was one of the key elements that
9 was being compromised. I don't know if that's all
10 the compromises, but, yes.

11 THE COURT: Mr. Miguel, I'm going to
12 stop. I have a monthly meeting that begins at
13 one, which I need to be there at one. So we'll
14 break now.

15 You may step down, Mr. Ryan. Watch your
16 step, sir. We'll see you again tomorrow morning.

17 THE WITNESS: Your Honor, shall I leave
18 this?

19 THE COURT: Leave that right there.

20 Ladies and gentlemen, we'll stop and I
21 will repeat to you my instruction that you not
22 discuss the case, keep an open mind as to every

1 *issue in the case.*

2 *It will probably be more crowded on the*
3 *roads when you try to be here by 8:45 than by*
4 *9:30, so you might be a little extra time. And*
5 *soon as everyone is here, we will get started.*
6 *Hopefully, that will be at nine o'clock.*

7 *I know that emergencies come up, traffic*
8 *jams or whatever. If you have a cell phone and*
9 *you're able safely to let Officer O'Brien know*
10 *that you're running late or you're ill or whatever*
11 *and you can do so, please let him know so that we*
12 *don't wait needlessly and worry about you and*
13 *where you might be. So if you can communicate*
14 *with us that you're running late, just let us*
15 *know. Do not risk life or limb to get here if*
16 *you're running late. We want you here safely in*
17 *any event.*

18 *See you again tomorrow morning at nine*
19 *o'clock.*

20 *(Whereupon, hearing was adjourned at*
21 *12:55 p.m.)*

22

C-E-R-T-I-F-I-C-A-T-I-O-N

I, Paula Pietrella, Official Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the court proceedings in the above-entitled matter.

I, Paula Pietrella, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Paula Pietrella, further certify that I

1 *neither am counsel for, related to, nor employed by*
2 *any of the parties to this action in which this*
3 *hearing was taken, and further certify that I am*
4 *not financially nor otherwise interested in the*
5 *outcome of the action.*

6
7 _____
8 *Paula Pietrella*
9 *3 Pemberton Square, 13th Floor*
10 *Boston, Massachusetts 02108*
11 *(617) 788-6184*

12
13 _____
14 *Date*

Commonwealth of Massachusetts
County of Suffolk
The Superior Court

CIVIL DOCKET#: SUCV2006-01625-BLS2

RE: Celanese International Corporation v Commercial Union Insurance Company aka
et al

TO: Michael John Miguel, Esquire
Morgan Lewis & Bockius LLP
125 High Street
14th floor
Boston, MA 02110

NOTICE OF DOCKET ENTRY

You are hereby notified that on **12/29/2009** the following entry was made on the above referenced docket:

JUDGMENT Count I for plff against deft OneBeacon in the sum of \$69,584.73 plus interest and costs; Count II in favor of deft One Beacon; Count III in favor of plff against deft One Beacon in the sum of \$181,085.69 plus interest and costs Count IV in favor of deft OneBeacon; Count V in favor of deft OneBeacon; Count VI in favor of deft One Beacon; Count VII in favor of deft OneBeacon; Count VIII in favor of deft OneBeacon; Count IX in favor of deft Resolute; Count X is in favor of deft One Beacon Judgment is awarded in favor of plff against deft Resolute in the amount fo \$181,085.69 as actual damages plus \$181,085 as double damages for a total of \$362,171.38 plus Interest and costs Plff shall file a motion for an award of reasonable atty's fees and costs in accordance with the memorandum on Flnal Judgment entered separately Count XI in favor of defts Count XII in favor of defts (Neel J) entered on docket pursuant to Mass R Civ P 77(d)
Dated at Boston, Massachusetts this 29th day of December, 2009.

Michael Joseph Donovan,
Clerk of the Courts

BY: Claire A. Walsh
Assistant Clerk

Telephone: 617-788-8152

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 06-1625-BLS2

CELANESE CORPORATION

v.

ONEBEACON AMERICA INSURANCE COMPANY, f/k/a/
COMMERCIAL UNION INSURANCE COMPANY, and
RESOLUTE MANAGEMENT, INC. - NEW ENGLAND DIVISION

JUDGMENT

This action having been tried before a jury, and the Court having determined matters remaining for disposition following the jury's verdict (see separate Memorandum on Final Judgment), it is now **ORDERED AND ADJUDGED** as to each count of the Second Amended Complaint, as follows:

Count I: Breach of Contract Against OneBeacon (1998 Asbestos/Chemical Cost Sharing Agreement)

Judgment is awarded in favor of plaintiff and against defendant OneBeacon in the amount of \$69,584.73, plus interest and costs.

Count II: Declaratory Judgment Against OneBeacon Pursuant to the 1998 Asbestos/Chemical Cost Sharing Agreement

Judgment is awarded in favor of defendant OneBeacon.

Count III: Breach of Contract Against OneBeacon (2001 Photo Resist Defense Agreement)

Judgment is awarded in favor of plaintiff and against defendant OneBeacon in the amount of \$181,085.69, plus interest and costs.

Count IV: Declaratory Judgment Against OneBeacon Pursuant to Photo Resist Agreement

Judgment is awarded in favor of defendant OneBeacon.

JUDGMENT ENTERED ON DOCKET Dec 26 20 07
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 63(a)
AND NOTICE SENT TO PARTIES PURV. JAN 11, THE PRO
VISIONS OF MASS. R. CIV. P. 77(b) ARE FOLLOWED

WHEN COPY OF JUDGMENT DULY ENTERED

12/26/07
JW
MUB
MUB
MUB
LHJ
MUB
KJU
HNS
WSP
X

Count V: Breach of Contract Against OneBeacon Under Liability Insurance Policies: Duty to Defend

Judgment is awarded in favor of defendant OneBeacon.

Count VI: Breach of Contract Against OneBeacon Under Liability Insurance Policies: Duty to Indemnify [Photo Resist]

Judgment is awarded in favor of defendant OneBeacon.

Count VII: Declaratory Judgment Under Liability Insurance Policies Against OneBeacon

Judgment is awarded in favor of defendant OneBeacon.

Count VIII: Breach of Implied Covenant of Good Faith and Fair Dealing Against OneBeacon

Judgment is awarded in favor of defendant OneBeacon.

Count IX: Tortious Interference with Contract Against Resolute

Judgment is awarded in favor of defendant Resolute.

Count X: C.L.C. 93A - Unfair and Deceptive Trade Practices Against OneBeacon and Resolute

Judgment is awarded in favor of defendant OneBeacon.

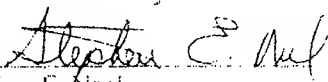
Judgment is awarded in favor of plaintiff and against defendant Resolute in the amount of \$181,085.69 as actual damages, plus \$181,085.69 as double damages, for a total of \$362,171.38, plus interest and costs. Plaintiff shall file a motion for an award of reasonable attorneys' fees and costs in accordance with the Memorandum on Final Judgment entered separately.

Count XI: Conspiracy Against OneBeacon and Resolute

Judgment is awarded in favor of defendants.

Count XII: G.L. c. 93A -- Unfair and Deceptive Concert of Action Against OneBeacon and
Resolute

Judgment is awarded in favor of defendants.


Stephen E. Neel
Justice of the Superior Court

Date: December 18, 2009

SCRIPPS

Not by

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COMMONWEALTH OF MASSACHUSETTS

Rev. 2-10-09

SUFFOLK SS

SUPERIOR COURT
CIVIL ACTION
No. 06-1625-BLS2

CELANESE CORPORATION,
Plaintiff,

vs.

ONEBEACON AMERICA INSURANCE COMPANY, D/k/a
COMMERCIAL UNION INSURANCE COMPANY,
and RESOLUTE MANAGEMENT, INC. – NEW ENGLAND DIVISION,
Defendants.

SPECIAL JURY VERDICT

1. Breach of Contract Claim v. OneBeacon

A. 1998 Asbestos/Chemical Defense Agreement ("1998 Cost Sharing Agreement")

1. Did the parties agree, either in writing or by conduct, to extend the 1998 Cost Sharing Agreement beyond its initial three-year term?

Yes ☒ No ☐

If your answer to Q. 1 is "Yes," go to Q. 2. If your answer is "No," go to Q. 6.

2. Has the 1998 Cost Sharing Agreement, as extended by the parties, expired or been terminated, and if so, when?

Yes, on or about (month/year) _____ No ☒

Go to Q. 3

3. Did OneBeacon breach the 1998 Cost Sharing Agreement as extended by the parties by failing to make payments thereunder when due?

Yes ☒ No ☐

If your answer to Q. 3 is "Yes," go to Q. 4. If your answer is "No," go to Q. 6.

Notice
sent
11/21/09

4. Was OneBeacon's breach a substantial factor in causing (i.e., a "legal cause" of) money damages to Celanese?

Yes ✓ No

If your answer to Q. 4 is "Yes," go to Q. 5. If your answer is "No," go to Q. 6.

5. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for OneBeacon's failure to make payments when due under the 1998 Cost Sharing Agreement as extended by the parties.

Sixty nine thousand five hundred eighty seven ⁷³
amount in words
\$ 69,584.73
amount in figures
Seventy three

Go to Part I.B.

B. OneBeacon Insurance Policies: Asbestos and Chemical Claims ("insurance policies")

[Answer Q. 6 only if your answer to Q. 1 was "No," or your answer to Q. 2 was "Yes." Otherwise, go to Q. 10.]

If you answered Q. 1 "No," answer Q. 6 for the period following the expiration or termination of the 1998 Cost Sharing Agreement at the end of its initial three-year term (i.e., after March 27, 2001). If you answered Q. 2 "Yes," answer Q. 6 for the period following the expiration or termination of the 1998 Cost Sharing Agreement as extended by the parties.]

6. Did OneBeacon have a duty to defend, under the insurance policies, with regard to asbestos or chemical claims against Celanese?

Yes No

If your answer to Q. 6 is "Yes," go to Q. 7. If your answer is "No," go to Q. 10.

7. Did OneBeacon breach its insurance policies with regard to the reimbursement of defense costs for asbestos and chemical claims against Celanese?

Yes No

If your answer to Q. 7 is "Yes," go to Q. 8. If your answer is "No," go to Q. 10.

8. Was OneBeacon's breach of its insurance policies a legal cause of money damages to Celanese?

Yes

No

If your answer to Q. 8 is "Yes," go to Q. 9. If your answer is "No," go to Q. 10.

9. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for the money damage for which OneBeacon's breach of its insurance policies was a legal cause.

amount in words

amount in figures

Go to Part I.C.

C. 2001 Photo Resist Defense Agreement

10. Did OneBeacon breach the 2001 Photo Resist Defense Agreement by failing to make payments thereunder when due?

Yes

✓

No

If your answer to Q. 10 is "Yes," go to Q. 11. If your answer is "No," go to Q. 13.

11. Was OneBeacon's breach a legal cause of money damages to Celanese?

Yes

✓

No

If your answer to Q. 11 is "Yes," go to Q. 12. If your answer is "No," go to Q. 13.

12. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for OneBeacon's failure to make payments when due under the Photo Resist Agreement

One hundred eighty ^{one} thousand ~~and eighty nine dollars~~ ~~and eighty nine dollars~~
amount in words
\$ 181,005.69
amount in figures
Sixty-nine cents

Go to Part II.

II. Violation of Chapter 93A Claim v. OneBeacon

13. Did OneBeacon commit an unfair or deceptive act or practice toward Celanese?

Yes ☒ No ☐

If your answer to Q. 13 is "Yes," go to Q. 14. If your answer is "No," go to Q. 17.

14. Was OneBeacon's unfair or deceptive act or practice a legal cause of money damages to Celanese?

Yes ☐ No ☒

If your answer to Q. 14 is "Yes," go to Q. 15. If your answer is "No," go to Q. 17.

15. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for the money damage for which OneBeacon's unfair or deceptive act or practice was a legal cause.

amount in words

amount in figures

Go to Q. 16.

16. Was OneBeacon's unfair or deceptive act or practice willful or knowing?

Yes ☐ No ☐

Go to Part III.

III. Violation of Chapter 93A Claim v. Resolute

17. Did Resolute commit an unfair or deceptive act or practice toward Celanese?

Yes ☒ No ☐

If your answer to Q. 17 is "Yes," go to Q. 18. If your answer is "No," go to Q. 21

18. Was Resolute's unfair or deceptive act or practice a legal cause of money damages to Celanese?

Yes ☒ No ☐

If your answer to Q. 18 is "Yes," go to Q. 19. If your answer is "No," go to Q. 21

19. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for the money damage for which Resolute's unfair or deceptive act or practice was a legal cause.

One hundred eighty one thousand eight hundred and eighty five
~~*One hundred thousand eight hundred and eighty five*~~
amount in words
\$181,685.69
amount in figures
and sixty nine cents

If the amount you have entered above in answer to this question includes any amount for damage which you have not already awarded in Part I for breach of contract, please state that amount not already awarded.

ZERO
amount in words

— 0 —
amount in figures

Go to Q. 20.

20. Was Resolute's unfair or deceptive act or practice willful or knowing?

Yes ☒ No ☐

Go to Part IV.

IV Intentional Interference With Contractual Relations Claim v. Resolute

21. Has Resolute proved by a preponderance of the evidence that, as an agent of OneBeacon for purposes of administering Celanese's claims for reimbursement of defense costs under the OneBeacon insurance policies, the 1998 Cost Sharing Agreement, and the Photo Resist Agreement, Resolute acted within the scope of its agency, and not maliciously?

Yes ☒ No ☐

If your answer to Q. 21 is "No," go to Q. 22. If your answer is "Yes," stop here, sign the verdict slip, and return to the courtroom.

22. Did Resolute intentionally and improperly interfere with Celanese's contractual relations with OneBeacon?

Yes ☐ No ☐

If your answer to Q. 22 is "Yes," go to Q. 23. If your answer is "No," go to Q. 25.

23. Was Resolute's interference a legal cause of money damages to Celanese?

Yes ☐ No ☐

If your answer to Q. 23 is "Yes," go to Q. 24. If your answer is "No," go to Q. 25.

24. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for the money damage for which Resolute's interference was a legal cause.

amount in words

amount in figures

If the amount you have entered above in answer to this question includes any amount for damage which you have not already awarded in Part I for breach of contract, please state that amount not already awarded.

.....
amount in words

.....
amount in figures

Go to Part V.

V. Conspiracy Claim v. OneBeacon and Resolute

[Note: answer Q. 25 only if you have answered "No" to Q. 21. If your answer to Q. 21 was "Yes," stop here, sign the verdict slip, and return to the courtroom.]

25. Did OneBeacon and Resolute unlawfully conspire to deprive Celanese of benefits due to it under the insurance policies, the 1998 Cost Sharing Agreement, and the Photo Resist Agreement?

Yes

No

If your answer to Q. 25 is "Yes," go to Q. 26. If your answer is "No," stop here, sign the verdict slip, and return to the courtroom.

26. Was OneBeacon's and Resolute's conspiracy a legal cause of money damages to Celanese?

Yes

No

If your answer to Q. 26 is "Yes," go to Q. 27. If your answer is "No," stop here, sign the verdict slip, and return to the courtroom.

27. Please state, in words and figures, the amount which will fairly and adequately compensate Celanese for the money damage for which OneBeacon's and Resolute's conspiracy was a legal cause.

.....
amount in words


.....
amount in figures

If the amount you have entered above in answer to this question includes any amount for damage which you have not already awarded in Part I for breach of contract, please state that amount not already awarded.

amount in words

amount in figures

I certify that each of the questions answered above was so answered by at least 10 of the jurors.


Foreperson of the Jury

Date: February 12, 2009

SCRIPPS

10/6/09 32
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss

SUPERIOR COURT
CIVIL ACTION
NO. 06-1625-BLS

CELANESE CORPORATION

v.

ONEBEACON AMERICA INSURANCE COMPANY, f/k/a/
COMMERCIAL UNION INSURANCE COMPANY, and
RESOLUTE MANAGEMENT, INC. – NEW ENGLAND DIVISION

MEMORANDUM ON FINAL JUDGMENT

Following trial of this action, the Court submitted to the jury, upon special questions, the claims stated in certain of the Counts contained in Celanese's Second Amended Complaint. The jury's answers to those questions, together with prior orders of the Court and the parties' submissions, dispose of each of the Counts, as set forth below and in the separate Judgment entered this date, save two: Count VII, as to which Celanese seeks a declaration by the Court; and Count X, for violation of G.L. c. 93A.

This Memorandum sets forth the basis for the manner in which each Count is disposed of in the Judgment.

Count I: Breach of Contract Against OneBeacon (1998 Asbestos/Chemical Cost Sharing Agreement)

The jury found that the parties agreed to extend the 1998 Cost Sharing Agreement beyond its initial three-year term (Q. 1), and that that Agreement as extended had not expired or been terminated (Q. 2). The jury further found that OneBeacon breached the 1998 Cost Sharing Agreement by failing to make payments thereunder when due (Q. 3), causing Celanese damages for the time value of those late payments in the amount of \$69,584.73 (Q. 4.5). Accordingly,

Worcester

judgment in that amount will enter for Celanese as to Count I.

Count II: Declaratory Judgment Against OneBeacon Pursuant to the 1998 Asbestos Chemical Cost Sharing Agreement

Count II seeks a declaration requiring OneBeacon's future compliance with the 1998 Cost Sharing Agreement. In post-trial submissions, the parties have agreed that Celanese has given notice of termination of that agreement; moreover, Celanese takes the position that it does not seek declaratory judgment under Count II. Accordingly, judgment will enter for OneBeacon as to Count II.

Count III: Breach of Contract Against OneBeacon (2001 Photo Resist Defense Agreement)

In instructing the jury as to Count III, the Court stated as follows:

The parties agree that the defense of all photo resist bodily injury claims brought against Celanese is governed by the Photo Resist Agreement, and that OneBeacon has paid its full one-sixth share of those defense costs under that agreement. The only question is whether OneBeacon made those payments when they were due, or whether OneBeacon delayed making those payments in breach of the Photo Resist agreement, and thereby deprived Celanese of the time value of the money represented by any delayed payments.

Pursuant to that instruction, the jury found that OneBeacon breached the 2001 Photo Resist Agreement by failing to make payments thereunder when due (Q. 10), and that OneBeacon's breach was a legal cause of money damages to Celanese (Q. 11) in the amount of \$181,085.69 (Q. 12). Accordingly, judgment in that amount will enter for Celanese as to Count III.

¹⁴Defendants incorrectly state that Celanese is requesting declaratory relief under Count II of its Second Amended Complaint. As set forth in its Application, Celanese is seeking relief under Count VII pursuant to the OneBeacon Policies. Plaintiff Celanese Corporation's Supplemental Memorandum in Support of its Application for Relief on G.L. c. 93A and Declaratory Judgment Counts, at 1 n. 1.

Count IV: Declaratory Judgment Against OneBeacon Pursuant to Photo Resist Agreement

As noted with regard to Count II, Celanese seeks a declaration only under Count VII. Accordingly, judgment will enter for OneBeacon as to Count IV.

Count V: Breach of Contract Against OneBeacon Under Liability Insurance Policies: Duty to Defend

In its Memorandum and Order on Motions for Summary Judgment, dated December 22, 2008, the Court ruled as follows with regard to Count V:

As to those bodily injury claims against Celanese which the jury determines to be claims listed in, or added by agreement to, respectively, the 1998 "Defense Cost Sharing Agreement Between Commercial Union and Hoechst Celanese Corporation," or the 2001 "Defense Agreement Between Celanese and Celanese Insurers Regarding Photo Resist Claims," OneBeacon's duty to defend, and the parties' rights and obligations pertaining thereto, shall be governed by whichever of the foregoing agreements applies. As to all other bodily injury claims as to which Celanese seeks defense costs in its Second Amended Complaint, OneBeacon's duty to defend, and the parties' rights and obligations pertaining thereto, shall be governed by any insurance policy alleged in the complaint which the jury determines is applicable to such claims.

The jury having determined that the 1998 Asbestos Chemical Cost Sharing Agreement was extended by agreement and was still in effect as of the trial, and the Court having instructed the jury that all defense costs had been paid pursuant to the 2001 Photo Resist Agreement, Celanese proved no bodily injury claims at trial which OneBeacon was required to defend under the insurance policies. Accordingly, judgment will enter for OneBeacon as to Count V.

Count VI: Breach of Contract Against OneBeacon Under Liability Insurance Policies: Duty to Indemnify [Photo Resist]

At trial the Court instructed the jury that "Celanese is seeking only what it claims as defense costs due from OneBeacon; Celanese is not seeking payment by OneBeacon of indemnity claims under the insurance policies." The case was tried and the jury found the facts

accordingly, and judgment as to this Count will therefore enter for OneBeacon.

Count VII: Declaratory Judgment Under Liability Insurance Policies Against OneBeacon

Celanese seeks a declaration in accordance with its argument that the Court ruled, in the Memorandum and Order on Summary Judgment, that "OneBeacon had an obligation, under its insurance policies, to provide Celanese with a full and complete (100%) defense." Plaintiff

Celanese Corporation's Application for Relief on G.L.c. 93A and Declaratory Judgment Counts, at 13. As defendants point out, the Court's ruling was as quoted above.

As to all other bodily injury claims [i.e., those not determined to be governed by either the 1998 Cost Sharing Agreement or the 2001 Photo Resist Agreement] as to which Celanese seeks defense costs in its Second Amended Complaint, OneBeacon's duty to defend, and the parties' rights and obligations pertaining thereto, shall be governed by any insurance policy alleged in the complaint which the jury determines is applicable to such claims.

When the Court instructed the jury, it described the effect of what the jury in fact found with regard to the 1998 Cost Sharing Agreement: "You will see from the special jury verdict that, if you have found that the 1998 CSA was continued by the parties and remains in effect, then all the asbestos and chemical claims against Celanese are subject to that 1998 CSA, and none are governed by the insurance policies." Because the jury determined that none of the asbestos and chemical claims which Celanese presented at trial in support of its claim for defense costs is to be defended under the terms of the insurance policies, Celanese is entitled to no declaration by the Court beyond the literal effect of the jury's finding. Put another way, now that Celanese has given notice of termination of the 1998 Agreement as of April 14, 2009, there is no dispute that defense of asbestos and chemical claims submitted thereafter is governed by the policies. There being no case or controversy, no declaration is necessary.

To be sure, the parties, in their post-verdict submissions, have demonstrated that there is a controversy over what their respective obligations are in light of Celanese's notice of termination. None of those newly-contested facts and issues were the subject of the case as tried; rather, they concern post-trial events. Accordingly, they are not properly the subject of a judgment in this case, because they represent a new dispute.

Nor, given the lack at trial of any evidence of unresolved Photo Resist claims, has Celanese established any additional basis for a declaration of rights regarding defense of such claims.

Count VIII: Breach of Implied Covenant of Good Faith and Fair Dealing Against OneBeacon

The Court instructed the jurors, in its instructions on breach of contract, that "[o]ne way in which a party may breach a contract is for that party to breach what is called the covenant of good faith and fair dealing in that contract." The Court then read to the jury the pattern instruction on good faith and fair dealing at § 14.1.2 of the MCLE Superior Court Civil Jury Instructions, and later included additional instructions thereon. Thus, the claim of breach of the covenant of good faith and fair dealing was presented to the jury as part of the breach of contract claim, rather than as a separate claim. Because Count VIII is duplicative of the breach of contract counts, judgment will enter for OneBeacon as to that count.

Count IX: Tortious Interference with Contract Against Resolute

In view of the jury's answer to Q. 21 of the Special Jury Verdict, judgment will enter for Resolute as to this count.

Count X: G.L. c. 93A -- Unfair and Deceptive Trade Practices Against OneBeacon and Resolute

The Court has previously indicated its intention to adopt the jury's advisory verdict on the

counts brought under c. 93A. See Order on G.L. c. 93A Counts, dated February 13, 2009.

In answer to Q. 13 and Q. 14 of the Special Jury Verdict, the jury found that OneBeacon had committed an unfair or deceptive act or practice toward Celanese, but that such conduct did not cause money damages to Celanese. Accordingly, judgment will enter for OneBeacon as to Count X.

The jury found that Resolute did commit an unfair or deceptive act or practice toward Celanese (Q. 17), causing money damages (Q. 18) in the amount of \$181,085.69 (Q. 19). That amount is precisely the amount which the jury awarded against OneBeacon for breach of contract (i.e., untimely payment of defense costs under the 2001 Photo Resist Agreement)(Q. 12). As the jury confirmed in answer to the second part of Q. 19, the award includes no damages in addition to those awarded in Part I for breach of contract. The jury further found that Resolute's conduct was willful or knowing (Q. 20).

The Court must address two additional issues regarding Resolute's liability under c. 93A. The first is the requirement that Resolute's unfair or deceptive acts or practices occurred "primarily and substantially" within the Commonwealth. G.L. c. 93A, § 11. See Kuwaiti Danish Computer Co. v. Digital Equip. Corp., 438 Mass. 459, 470-473 (2003). For the reasons stated in Celanese Corporation's Application for Relief on G.L. c. 93A and Declaratory Judgment Counts, at 8 (and not contested by Resolute), the Court concludes that Resolute has not met its burden of proving "that such transactions and actions did not occur primarily and substantially within the commonwealth." G.L. c. 93A, § 11.

The second issue is Resolute's contention that Count X should be dismissed because the Photo Resist Agreement (clearly the sole subject of the jury's finding, in view of the jury's answer

to Q. 19) is governed not by Massachusetts law but by Delaware law. The parties essentially agree on the applicable test, both citing Northeast Data Sys., Inc. v. McDonnell Douglas Computer Sys. Co., 986 F.2d 607, 609-611 (1st Cir. 1993) (plaintiff's c. 93A claims "amount to embroidered 'breach of contract' claims;" allegations of willful or knowing conduct do not "take these [c. 93A] claims outside the scope of contractual language that says California laws will govern" the parties' rights and obligations under their contract.) Id. at 610. The court distinguishes true tort claims, such as fraudulent inducement. Id.

Here, the only party which the jury found to have committed unfair or deceptive acts or practices resulting in money damage to Celanese is Resolute – which, as Celanese points out, is not a party to the 2001 Photo Resist Agreement. Resolute's conduct with regard to late payments to Celanese is thus based in tort, not contract, and the choice of law provision is therefore inapplicable as to Resolute.

Celanese requests that damages awarded against Resolute should be trebled under G.L. c. 93A, § 11, which provides:

If the court finds for the petitioner, recovery shall be in the amount of actual damages, or up to three, but not less than two, times such amount if the court finds that the use or employment of the method of competition or the act or practice was a willful or knowing violation of said section two.

The jury found that Resolute's unfair or deceptive act or practice was willful or knowing. Based on the evidence at trial concerning Resolute's conduct, the Court concludes that the appropriate award against Resolute under § 11 is two times the actual damages of \$181,085.69, or \$362,171.38.⁷

⁷Celanese argues, without citing any supporting authority, that the c. 93A award should include not only the damages awarded by the jury, but also "the specific damages alleged in the

Because Celanese may be made whole only once, the result of the Court's award of double damages against Resolute is that Celanese may elect to collect its actual damages of \$181,085.69 either from OneBeacon, pursuant to the judgment on Count III, or from Resolute, pursuant to the judgment on Count X.³ Thus, if Celanese collects from OneBeacon its actual damages of \$181,085.69 under Count III, it may collect from Resolute only the additional \$181,085.69 awarded by the Court under Count X; if Celanese instead collects from Resolute its actual damages in the amount of \$181,085.69 under Count X, then it may collect also the additional \$181,085.69 awarded by the Court under that Count. In the latter event, Celanese would collect nothing from OneBeacon under Count III.

Chapter 93A, § 11 provides also that

If the court finds in any action commenced hereunder, that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorneys' fees and costs incurred in said action.

Accordingly, Celanese may, not later than January 8, 2010, serve upon Resolute a motion for "reasonable attorneys' fees and costs incurred in said action," with supporting affidavits specifying the basis therefor, including details of attorney time. Resolute may serve its opposition thereto within two weeks following receipt of the motion, after which Celanese shall

complaint and paid by defendants after suit was filed, leading up to trial," Celanese's Application, at 11 -- which, after trebling, Celanese calculates as exceeding \$15,000,000. The short answer to this argument is that c. 93A provides that "recovery shall be in the amount of actual damages," which the jury fixed at \$181,085.69. The Court having adopted the jury's advisory verdict on the c. 93A counts, the damages proved at trial and found by the jury comprise the total "actual damages" which Celanese may recover under Count X.

³This is not to say that, if Celanese were to collect only part of its actual damages from OneBeacon under Count III, it could not seek the remainder from Resolute under Count X.

submit the motion package to the Court. Counsel shall then schedule with the session clerk a hearing on the motion, if one is desired.

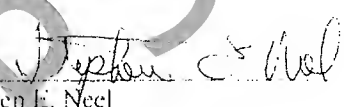
Count XI: Conspiracy Against OneBeacon and Resolute

In accordance with the jury's verdict, judgment will enter for defendants as to Count XI

Count XII: G.L. c. 93A -- Unfair and Deceptive Concert of Action Against OneBeacon and Resolute

Celanese's Application for Relief on G.L. c. 93A seeks relief under Count X only.

Accordingly, judgment shall enter for defendants as to this count.


Stephen E. Neel
Justice of the Superior Court

Date: December 18, 2009